

HB

25

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An act relating to affirmative BRU: Personnel
action.
 Sponsor: Martin Components: Centralized Administrative
 Requestor: _____ Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	115.0	115.0	115.0	115.0	115.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	115.0	115.0	115.0	115.0	115.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	115.0	115.0	115.0	115.0	115.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	115.0	115.0	115.0	115.0	115.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

[Empty box for analysis]

Prepared By: *Diana DeSimone* Phone: 465-4430
 Division: Personnel Date: 1-21-88

Approved by Commissioner: John M. Andrews Date: 1/23/88
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill No. HB 25

House Bill 25 grants the Office of Equal Employment Opportunity broad enforcement authority with respect to equal employment opportunity and affirmative action matters. Of concern to the Division of Personnel is that portion of the proposed bill which allows the office to require agencies to change their selection procedures, that is, to require new examination or testing methods for employment application. Currently, any examination device must adhere to federally mandated test validation procedures. The proposed legislation appears to impose requirements for test validation that are in addition to the federal requirements.

Depending on the scope of the validation exercise, i.e., number of job classes involved, number of positions concerned, number of job sites affected, costs may range from \$30,000 to \$200,000 per examination. The fiscal note assumes an average of these two figures with one test validation performed per fiscal year. Contractual rather than personal services are indicated because it is most cost effective to contract with firms who specialize in test validation than to recruit and hire State employees with these specialized qualifications.



CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
EXECUTIVE COMMITTEE, 1986 - 1988

April 29, 1987

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Edward K. Thomas
Admin. Offices

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Res: (907) 789-2929

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Res: (907) 780-6836

The Honorable Steve Cowper
Governor of Alaska
P. O. Box A
Juneau AK 99811

Dear Governor Cowper:

re Resolution 87/88-04 : Support for House Bill 25

The Central Council of Tlingit and Haida Indian Tribes of Alaska advised legislative committees of its support of HB 25 upon adoption of a Central Council position last week. The formal resolution is enclosed for your records.

We believe this piece of legislation is critical to the proper functioning of the EEO law, and we urge its enactment into law.

Please advise if we may provide further support. Thank you.

Sincerely,

Edward K. Thomas
President

EKT/jg
encls

cc: State Legislators
State Agencies
Bush Caucus
Rep. Terry Martin

JC

Did I send this to you already
asking to send letter to Ed Thomas
Sharing core report showing signatures
on do pass/no vote/etc. and
showing my support.

7



CENTRAL COUNCIL

Tlingit and Haida Indian Tribes of Alaska
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801

FIFTY-SECOND GENERAL ASSEMBLY
Central Council of Tlingit and Haida Indian Tribes of Alaska
April 16-18, 1987
Juneau, Alaska

Resolution 87/88-04

Title: Support for HB 25

Submitted by: Juneau T&H Community Council

WHEREAS, the State Equal Employment Opportunity law, AS 44.19, was passed in 1985; and

WHEREAS, the Alaska Native Brotherhood, Central Council of Tlingit and Haida Indian Tribes of Alaska and Sealaska Corporation worked hard to assure the passage of the law; and

WHEREAS, Native hire in State government continues to remain a high priority for us; and

WHEREAS, HB 25 has been introduced in this legislative session to amend the EEO law; and

WHEREAS, the bill is designed to strengthen and give clout to current EEO law; and

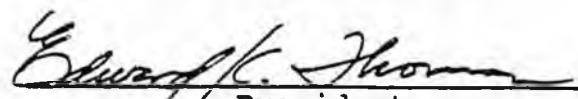
WHEREAS, HB 25 in its present form would provide the office of EEO tools necessary to adequately implement the EEO law;

NOW, THEREFORE, BE IT RESOLVED by the Central Council of Tlingit and Haida Indian Tribes of Alaska, in Annual Assembly, to go on record as supporting HB 25 in its present form; and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Bush Caucus, Representative Terry Martin, and Governor Steve Cowper.

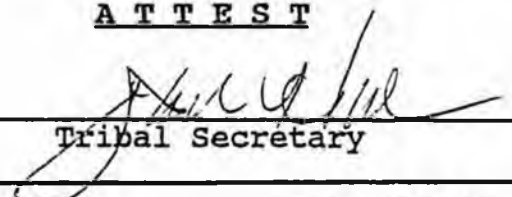
ADOPTED this 17th day of April, 1987, by the Fifty-Second General Assembly of the Central Council of Tlingit and Haida Indian Tribes of Alaska, in session at Juneau, Alaska.

C E R T I F I E D



President

A T T E S T



Tribal Secretary

TELEPHONE: 907/ 586-1432

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/19/87

FURTHER REFERRALS: Judiciary
Finance

DATE: 4-24-87

The State Affairs Committee has considered HB 25

"An Act relating to affirmative action."

RECOMMENDS:

- replace with CS HB 25 (SA) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO/PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature]
Chairman's signature

Original sponsor: Martin

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 25 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to affirmative action."

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

8 * Section 1. AS 44.19.442(b) is amended to read:

9 (b) The office may

10 (1) recommend legislative or administrative action to the
11 governor relating to equal employment opportunity and affirmative
12 action matters;

13 (2) require the division of personnel in the Department of
14 Administration to purge records from the personnel file of an employee
15 who has filed a complaint of unlawful discrimination;

16 (3) forbid an agency to hire or promote employees and
17 require an agency to reverse a personnel action including a hiring
18 decision if it finds that the action was based on a discriminatory
19 employment practice;

20 (4) require an agency to change its selection procedures if
21 it finds that the procedures have a discriminatory effect on members
22 of a protected class; and

23 (5) require an agency to investigate whether an employee
24 has violated this subsection and to impose discipline if the inves-
25 tigation reveals facts warranting it.

26 * Sec. 2. AS 44.19.442 is amended by adding a new subsection to read:

27 (c) A collective bargaining agreement adopted under AS 23.40.-
28 070 - 23.40.260 (Public Employment Relations Act) must be consistent
29 with principles of equal employment opportunity and affirmative

1 action. AS 44.19.441 - 44.19.449 supercede the provisions of AS 39.25
2 (State Personnel Act).

3 * Sec. 3. AS 44.19.444 is amended to read:

4 Sec. 44.19.444. AFFIRMATIVE ACTION PLAN. The governor shall
5 establish an equal employment opportunity program and adopt annually
6 an affirmative action plan for the executive branch of state govern-
7 ment. The plan remains in effect until the governor adopts a subse-
8 quent plan. The office shall work with each agency to enhance equal
9 employment opportunity.

10 * Sec. 4. AS 44.19.445 is amended by adding a new subsection to read:

11 (b) When the office finds that an agency has violated the affir-
12 mative action plan or its affirmative action program, the office may

13 (1) suspend the hiring authority of the agency; and

14 (2) impose mandatory affirmative action measures on the
15 agency to bring the agency into compliance.



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

STATE AFFAIRS COMMITTEE

HOUSE BILL 25

FILE CONTENTS

1. HOUSE BILL 25
2. FISCAL NOTE, DIVISION OF PERSONNEL, \$115,000
3. FISCAL NOTE, EQUAL EMPLOYMENT OPPORTUNITY, -0-
4. MEMO FROM LYDIA JONES TO STATE AFFAIRS COMMITTEE, DATED 2/10/87
5. UNITED ALASKA MINORITY COALITION NEWSLETTER, FEBRUARY 1987
6. LETTER FROM CHERIE SHELLEY TO REPRESENTATIVE ULMER, DATED 2/12/87
7. LETTER FROM JOHN GAGUINE T .PRESENTATIVE ULMER, DATED 2/17/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

2

Bill Version: HB 25
Publish Date: _____

REQUEST _____

Revision Date: _____

Agency Affected: Division of Personnel

Title: An act relating to affirmative action.

BRU: Personnel

Sponsor: Martin

Components: Centralized Administrative

Requestor: _____

Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	115.0	115.0	115.0	115.0	115.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	115.0	115.0	115.0	115.0	115.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	115.0	115.0	115.0	115.0	115.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	115.0	115.0	115.0	115.0	115.0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

ATTACHED

Prepared By: Diana DeSimone *Diana DeSimone* Phone: 465-4430
Division: Personnel Date: 1-27-87

Approved by Commissioner: Garrey Peska *Garrey Peska* Date: 2/5/87
Agency: Department of Administration

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill No. HB 25

House Bill 25 grants the Office of Equal Employment Opportunity broad enforcement authority with respect to equal employment opportunity and affirmative action matters. Of concern to the Division of Personnel is that portion of the proposed bill which allows the office to require agencies to change their selection procedures, that is, to require new examination or testing methods for employment application. Currently, any examination device must adhere to federally mandated test validation procedures. The proposed legislation appears to impose requirements for test validation that are in addition to the federal requirements.

Depending on the scope of the validation exercise, i.e., number of job classes involved, number of positions concerned, number of job sites affected; costs may range from \$30,000 to \$200,000 per examination. The fiscal note assumes an average of these two figures with one test validation performed per fiscal year. Contractual rather than personal services are indicated because it is more cost effective to contract with firms who specialize in test validation than to recruit and hire State employees with these specialized qualifications.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

3

REQUEST: _____

Bill Version: HB 25
Publish Date: 1-19-87

Revision Date: _____
Title: An Act Relating to
Affirmative Action

Agency Affected: Office of the Governor
BRU: Commissions/Special Offices

Sponsor: Martin
Requestor: House State Affairs

Components: Equal Employment
Opportunity

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME						
PAK-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Michael A. Nizich, Director
Division: Administrative Services

Phone: 465-3616
Date: 2-6-87

Approved by Commissioner: Carol P. Kastelic
Agency: Exec. Assistant, Office of the Governor

Date: 2-6-87

Distribution (by preparer):

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



Alaska State Legislature

House

4

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

Date: February 10, 1987

To: House Committee on State Affairs

From: Lydia Jones, Legislative Assistant
Office of Representative Terry Martin

Re: HB 25 - Affirmative Action

For over two years, our office has been receiving complaints from members of an Anchorage based group called "Minority Victims of Alaska State Government Discrimination". This organization was founded by individuals who felt that they had been discriminated against by the State of Alaska. The group alleges that the State has been discriminatory in its hiring and promotion practices. They further allege that the state attempts to retaliate against employees who have filed discrimination complaints or who have pointed out improper procedures going on in State government.

Take for example the litigation initiated by an employee with six years of state service. Between 1977 and 1982, this individual filed a total of four discrimination suits with the Office of Equal Employment Opportunity and the Alaska Human Rights Commission. In his experience, the administrative complaints received by these state agencies did not result in relief or resolution agreements that were satisfactory to him. This complainant finally took his case to the Superior Court for adjudication. After reaching an out of court settlement with the state, this individual began to reapply for state jobs only to find that he was essentially "blackballed" because his personnel files still contained reports, performance appraisals and other documentation that was the result of the discriminatory practices that he had been subjected to during his past employment with the state.

Another example is that of a two year state employee who "blew the whistle" on certain improprieties regarding the management and control of state property. Investigation of these improprieties led to the firing of his boss and a grand jury probe into the affairs of the department. As a result of these revelations, this individual was laid off. He was told that the lay off was due to "budgetary constraints". This

individual filed two discrimination complaints with the Alaska Human Rights Commission. The arbitrator in this action concluded that this employee was laid off by certain state officials partly in retaliation for questioning safety practices at work and ordered that he be reinstated.

These examples are only two of many.

The State Office of Equal Employment Opportunity as established by statute in 1985, was given the responsibility to administer the equal employment opportunity program and to ensure its compliance. The office was never given the authority to "enforce" the concept of equal employment opportunity. Under AS 44.19, the Office of Equal Employment Opportunity can only recommend solutions to an agency if that agency is found to be in noncompliance with affirmative action guidelines. The agency is in no way obligated to comply with those recommendations.

HB 25 will enable the Office of Equal Employment Opportunity to enforce compliance with affirmative action standards, guidelines and procedures by:

- 1) forbidding an agency to hire or promote employees and requiring an agency to reverse a personnel action including a hiring decision if it finds that the action was based on a discriminatory employment practice.

- 2) requiring an agency to change its selection procedures if it finds that the procedures have a discriminatory affect on members of a protected class.

- 3) requiring an agency to hold a disciplinary hearing to determine whether an employee has violated this subsection; the Office of EEO may participate in the hearing.

HB 25 will also require the Division of Personnel in the Department of Administration to purge records from an employee's personnel file if the records are the direct or indirect result of complaint of unlawful discrimination by a state official or employee. One official of the State of Alaska acknowledged that, "The criminal justice system in this state basically treats convicted felons better than the State personnel system treats employees and former employees". By this he meant that under certain circumstances, a convicted felon may have his/her record purged after their sentence has been satisfied and they are released from probation. However, a state employee who has filed a complaint or who has

derogatory documentation on disciplinary actions in his/her personnel file has no such recourse.

We felt that it was important to provide for the protection of these individuals. Once information of this type has been placed in a personnel file, it remains there indefinitely. The end result is that the individual is passed over for promotion or finds it virtually impossible to get rehired by the state once he/she terminates.

In summary, we feel that this legislation will give the Office of Equal Employment Opportunity the "clout" it needs to really get down to the business of implementing the statewide Affirmative Action Plan.



February
1987

Editor: Tim Weiss

UMC MEETING

February 6, 5-7:30 pm
Filipino Community Hall
251 South Franklin St.

AGENDA:

Appointment of Committees on UMC's function: membership, fund raising, legislative lobbying, Martin Luther King anniversary 1988, problem of UMC, solutions.

Meetings are open to the public.

MEMBERSHIP DUES DUE

UMC Treasurer, Aida Ganev, has informed me that UMC membership dues are due. UMC needs your support to continue putting out this newsletter, to continue to provide support to the minority community, put on functions such as Martin Luther King Jr. Day celebrations, and future efforts. Dues are totally tax deductible.

AFFIRMATIVE ACTION BILL INTRODUCED

As Review by: *Ben Holganza, UMC President*

HB 25 entitled "An Act relating to affirmative action" was recently introduced by Representative Terry Martin. This would amend the State Office of EEO statute by adding a few requirements and duties to the office, namely:

1) *require the division of personnel in the Department of Administration to purge records from an employee's personnel file if the records are the direct or indirect result of complaint of unlawful discrimination by a state official or employee;*

2) *forbid an agency to hire or promote employees and require an agency to reverse a personnel action including a hiring decision if it finds that the action was based on a discriminatory employment practice;*

3) *require an agency to change its selection procedures if it finds that the procedures have a discriminatory affect on members of a protected class; and*

4) *require an agency to hold a disciplinary hearing to determine whether an employee has violated this subsection; the office may participate in the hearing.*

I have heard that the ideas in this bill originated from an actual case that Rep. Martin was aware of in which a state employee was "blackballed" after filing and winning a discrimination complaint. Apparently the fact that he/she had filed a complaint was kept in the personnel files and agencies who interviewed this person felt that he/she might be a troublemaker.

Several people have commented that even former convicts have more rights than state government employees do. Former convicts can have their conviction and arrest records purged after serving their probation, but state employees who file a complaint can't. Is this justice?

This bill would also serve another valuable function, it would finally define the function of OEEEO more clearly and settle the dispute over whether OEEEO is a "resource" agency or an "enforcement" agency.

PUBLIC HEALTH NURSES' APPEAL

On November 27, 1986, Superior court Judge Duane Craske directed the parties in the public health nurses' case to get on with the appeal of the Human Rights Commission's Order. The commission decided earlier in January 1986 that the state Department of Health and Social Services and Department of Administration had discriminated against the nurses by paying them less than physician's assistants. The commission decided that nurses were victims of sex discrimination because their work was of comparable character to the work of the physician's assistants but were paid less.

In February 1986, the state appealed the commission decision and since then the progress of the appeal was stymied by disputes about which judge should decide the case and whether damages should be calculated before the appeal would be heard. In the most recent action, Judge Craske of Sitka told the parties to go forward on the appeal without a specific damage award.



6

**Alaska Public
Employees Association APEA**
State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

MEMORANDUM

TO: Representative Fran Ulmer
Chairwoman, State Affairs Comm.

FROM: Cherie Shelley
Executive Director

SUBJECT: HB 25 - An Act relating to affirmative action

DATE: February 12, 1987

The Alaska Public Employees Association has no objection to the overall thrust of HB 25, a bill introduced by Representative Martin that would greatly strengthen the powers of the Office of Equal Employment Opportunity with respect to equal employment opportunity and affirmative action in the executive branch of state government. APEA does have questions about a couple of specific items in the bill, however.

Proposed AS 44.19.442(b)(5) (Section 1 of this bill) would require an agency to hold a disciplinary hearing to determine whether an employee has violated equal employment or affirmative action principles. It is unclear to us exactly how this would work. What type and amount of evidence would the office have to have before it could require such a hearing? Who would determine an appropriate sanction if some sort of violation were found? Would the hearing be a full-blown adversary proceeding, or just an opportunity for the employee to respond to accusations against him or her? How does this hearing fit into the contractual grievance procedure? (APEA of course would strenuously oppose this provision if it were intended to supplant the arbitration procedure.) In short, there are some questions about this section that definitely need to be answered.

Proposed AS 44.19.442(c) (Section 2 of the bill) provides that any collective bargaining agreement between the State and a labor association may not "contradict" the statutes on the Office of Equal Employment Opportunity. APEA has no problems with the basic principle of this section, that a collective bargaining

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Fairbanks, AK 99701
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833 Gambell Street, Suite A
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Juneau Field Office
227 4th Street
Juneau, AK 99801
Telephone: (907) 586-6305

agreement must incorporate the concepts of equal employment opportunity and affirmative action. (The current agreements between the State and APEA provide that a special promotion list of minorities and/or women may be used instead of the normal promotion list when the need for the special list is certified.) However, again APEA has problems with the idea of prohibiting conflict with any of the myriad provisions of AS 44.19.441 - 44.19.449; this is, in our opinion, too constricting on the collective bargaining process. Thus, for instance, Rep. Martin's bill in proposed AS 44.19.442(b)(4) would empower the office to require an agency to change its selection procedures if it finds that the current procedures have a discriminatory effect. This might require the overriding of a carefully negotiated contract provision, one agreed to with affirmative action goals in mind. In our view the language of proposed AS 44.19.442(c) is just too broad.

CS/kr