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SENATE COMMITTEE REPORT

FURTHER:

JUDICIARY

2/26/87

DATE TURNED INTO OFFICE MARCH 30, 1987

Mr. President:

STATE AFFAIRS

Committee considered HB 86

definition of veteran for purposes of veterans' employment preference rights.

and recommended:

replace with CS FOR _____) same title
 or adopt _____ CS FOR _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]

[Signature]
Chairman signature and recommendation

Committee Backup Attached

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 29, 1987

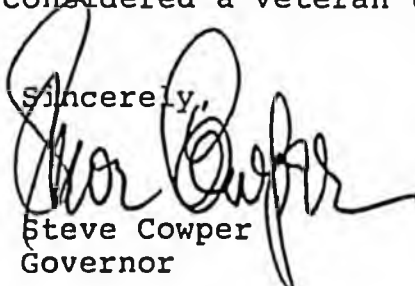
The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the definition of "veteran" for purposes of veterans' preference rights for state employment. This bill conforms the current definition of "veteran" found in AS 39.25.150(19)(A) to the federal definition in 5 U.S.C. sec. 2108.

In essence, the bill extends the period of time of active duty in the United States armed forces which qualifies an individual as a veteran for employment preference. The Alaska statute currently sets November 7, 1975 as the service cut-off date for qualifying as a veteran, while federal law establishes October 14, 1976 as the date. The bill amends AS 39.25.150(19)(A) to reflect the October 14, 1976 date, thereby conforming the federal and state periods of service for being considered a veteran to receive employment preference rights.

Sincerely,



Steve Cowper
Governor

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

REQUEST: _____
 Revision Date: 02/09/87
 Title: Definition of "Veteran" for purposes of employment preference
 Sponsor: Rules Committee
 Requestor: Governor

Bill Version: HB 86
 Publish Date: HOUSE 2/11/87

Agency Affected: Administration
 BRU: Personnel
 Components: _____

41

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-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-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

The State Affairs Committee intends for all advertising to be done through public service announcements and veterans organizations.

Prepared by: Fran Ulmer, Chair
 Division: House State Affairs Committee

Phone: 465-4963
 Date: February 9, 1987

Approved by Commissioner: _____
 Agency: _____

Date: _____

Distribution (by preparer):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

1130 '87

Revision Date : _____

REQUEST

Bill/Resolution No. : Law Log #773-87-0002
Title : Definition of "Veteran"

Sponsor : Rules Committee
Requestor : Governor
Date of Request : _____

FISCAL DETAIL

Agency Affected : Military & Veterans Affairs
BRU : _____

Components : _____

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-	-0-

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

No fiscal impact on this department.

Prepared by : *R.L.R.* Richard L. Rountree, Director
Division : Administrative & Support Services

Phone : 465-4600
Date : 10/13/86

Approved by Commissioner : *Richard L. Rountree* MG Edward G. Pagano
Agency : Dept. of Military & Veterans Affairs

Date : 10/13/86

Distribution (by Agency preparing fiscal note) :

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

1/30/87

Revision Date: _____

REQUEST
Bill/Resolution No.: _____
Title: Definition of veteran for
purposes of employment preference

FISCAL DETAIL
Agency Affected: Administration
BRU: Personnel

Sponsor: _____
Requestor: _____
Date of Request: _____

Components: Personnel

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	1.7	0	0	0	0	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	1.7	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	1.7	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	1.7	0	0	0	0	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 Cost of running 2" x 4" display ad in newspapers around the state to notify applicants of the change--\$1,700. Assumes an effective date in FY 87.

Prepared By: Frank Raye
Division: Personnel

Phone: 465-4430
Date: _____

Approved by Commissioner: Eleanor Andrews
Agency: Department of Administration

Date: _____

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

The second 1982 amendment added paragraph (c)(17).

The third 1982 amendment rewrote this section.

The first 1984 amendment inserted "and Veterans" in paragraph (1) of subsection (c).

The second 1984 amendment changed the internal reference in subsection (b).

The third 1984 amendment substituted "of the public defender agency, and of the office of public advocacy in the Department of Administration" for "and of the public defender agency" in paragraph (3) of subsection (c).

The fourth 1984 amendment added paragraph (18).

Sec. 39.25.130. Extension of partially exempt and classified services. (a) The personnel board, upon written recommendation of the commissioner of administration, may extend the partially exempt service to include any position in the classified service which, in the judgment of the board:

- (1) involves principal responsibility for the determination of policy;
- (2) involves principal responsibility for the way in which policies are carried out; or
- (3) involves responsibilities and duties of a type not susceptible to the ordinary recruiting and examining procedures.

(b) Positions may not be included in the partially exempt service under this section if the inclusion is inconsistent with federal requirements for state agencies supported in whole or in part by federal funds.

(c) The personnel board, upon written recommendation of the commissioner of administration, may extend the classified service to include any position in the partially exempt service. (8 7 ch 144 SLA 1960, am §§ 9, 10 in 112 SLA 1982)

Effect of amendments. — The 1982 amendment "After June 30, 1961" from the beginning of subsections (a) and (c), deleted "which was" following "include any position" both in the introductory paragraph of subsection (a) and in subsec-

tion (c), and deleted "on April 19, 1960" following "in the classified service" in the introductory paragraph of subsection (a) and following "partially exempt service" in subsection (c).

NOTES TO DECISIONS

Cited in *Halling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1741 (file No. 3418), 785 P.2d 870 (1978).

Article 3. Personnel Rules.

Section	Section
140. Amendment of personnel rules	153. Departmental personnel officers
150. Scope of the rules	155. Vocational substitution program

Sec. 39.25.140. Amendment of personnel rules. (a) The director of personnel shall prepare and submit to the commissioner of administration any proposed amendments to the personnel rules for all positions and employees subject to this chapter.

(b) The commissioner of administration shall review the amendments and submit them to the personnel board.

(c) At least 30 days before the adoption, amendment, or repeal of a personnel rule, the secretary to the personnel board shall provide notice that the personnel board has the proposed action under consideration. The notice shall be

- (1) posted in public buildings throughout the state;
- (2) published in one or more newspapers of general circulation throughout the state;
- (3) mailed to each person or group that filed a request for notice of proposed action with the secretary to the personnel board;
- (4) furnished to each member of the legislature and to the Legislative Affairs Agency.

(d) The rules may provide for exemptions and modifications that are necessary to assure the continuity of federal grants to agencies supported in whole or in part by federal contributions.

(e) The rules adopted under this chapter relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act. The rules shall be published in the Alaska Administrative Register and Code for informational purposes.

(f) Failure to mail notice to a person as required in this section does not invalidate an action taken by the personnel board.

(g) An amendment to the personnel rules takes effect 30 days after it is approved by the personnel board. The board, if requested to do so, may hold a public hearing on a proposed amendment. (8 12 ch 144 SLA 1960, am § 5 ch 5 SLA 1966, am §§ 11-13 ch 112 SLA 1982)

Effect of amendments. — The 1982 amendment rewrote subsection (c), substituted "shall be published" for "may be

published" in the second sentence of subsection (c), and added subsections (f) and (g).

NOTES TO DECISIONS

A right clearly created by statute cannot be taken away by regulation. *Muller v. Alaska State Bd. of Personnel*, Sup. Ct. Op. No. 1096 (file No. 738), 425 P.2d 145 (1967).
 Stated in *Kelly v. Zamatello*, Sup. Ct.

Op. No. 705 (file No. 1254), 186 P.2d 900 (1957).
 Cited in *State v. Dependent*, Sup. Ct. Op. No. 918 (file No. 1667), 512 P.2d 111 (1973).

The personnel rules shall provide for

(1) the preparation, maintenance, and revision by the director of personnel, subject to approval of the commissioner of administration and the personnel board, of a position classification plan for all positions in the classified and partially exempt services; the position classification plan shall include

39.25.150(19)(A) →

(A) a grouping together of all positions into classes on the basis of duties and responsibilities;

(B) an appropriate title, a description of the duties and responsibilities, training and experience qualifications, and other necessary specifications for each class of positions;

(2) the preparation, maintenance, revision and administration by the director of personnel of a pay plan for all positions in the classified and partially exempt services; the pay plan (A) shall be based upon the position classification plan; (B) shall provide for fair and reasonable compensation for services rendered, and reflect the principle of like pay for like work; (C) may be amended, approved, or disapproved by the legislature in regular or special session; after the pay plan is in effect, a salary or wage payment may not be made to a state employee covered by the plan unless the payment is in accordance with this chapter and the rules adopted under this chapter or unless the payment is in accordance with a valid agreement entered into in accordance with AS 23.40;

(3) the use of employee selection methods, including open competitive examinations, when appropriate, that will fairly test the capacity and fitness of the person examined to discharge the duties of the class in which employment is sought;

(4) the establishment and maintenance of eligible lists for appointment and promotion providing the names of eligible candidates in order of their relative performance in the examinations;

(5) the procedure for certifying eligible candidates; the rule adopted under this paragraph may include procedures providing a preference for certifying local residents when appropriate;

(6) promotions from within the state service when there are qualified candidates in the state service; vacancies shall be filled by promotion whenever practicable and in the best interest of the state service and promotion shall be by competitive examination whenever possible; in considering promotions, the applicants' qualifications, performance records, seniority, and conduct shall be evaluated;

(7) a period of probation not to exceed one year before an appointment to a position becomes permanent, except that a permanent employee receiving a promotional appointment retains permanent status in the service and job class from which appointed for the duration of the probationary period and may be demoted to a former class without right of appeal, notwithstanding AS 39.25.170, but if the employee is dismissed from the service the appeal rights under AS 39.25.170 apply;

(8) nonpermanent and emergency appointments to positions in the state service in accordance with AS 39.25.195 — 39.25.200;

(9) provisional appointment without competitive examination when appropriate eligible lists are not available;

(10) transfers from one department to another and from another merit system jurisdiction, to the state service;

(11) transfers from one area of the state to another;

(12) the reinstatement of a person who resigns in good standing;

(13) layoffs for reason of lack of money or work, abolition of positions, or material changes in duties or organization; both performance and seniority records shall be considered in the development of layoff orders;

(14) the development, maintenance, and use of employee performance records;

(15) the establishment of disciplinary measures which may include disciplinary suspension without pay;

(16) the procedures for review of disputed personnel actions, for resolving employee and interagency grievances, and for resolving grievances of the general public concerning the operation of the state personnel system;

(17) hours of work for all employees in the state service;

(18) methods and procedures covering overtime work and pay;

(19) the granting of employment preference rights to a veteran not within the area of promotion, when the veteran possesses the necessary qualifications in the job classification applied for under this chapter, in an examination to determine the qualification of applicants for entrance into the classified service under merit system examination, five additional points shall be added to the passing grade of a veteran and ten additional points shall be added to the passing grade of a disabled veteran, but the additional points may be used only the first time the veteran obtains a position in the classified service, if a position in the classified service is eliminated, employees shall be released in accordance with rules which give due effect to all factors, if all job qualifications are equal, the veteran shall be given preference over the nonveteran and the veteran shall be kept on the job; this paragraph may not be interpreted to amend the terms of a collective bargaining agreement; in this paragraph

means a person with 181 days or more active service in the armed forces of the United States who has been honorably discharged after having served during any period between April 6, 1917, and December 1, 1919, between September 16, 1940, and December 31, 1947, or between June 27, 1950, and November 7, 1975.

(B) "disabled veteran" means a veteran who is entitled to compensation under laws administered by the United States Veterans' Administration, or a person who was honorably discharged or released from active duty because of a service-connected disability.

(20) the employment of persons in permanent positions on a part-time basis of 15 hours or more a week, including the employment of two persons to fill one permanent full-time position; these employees shall be designated as permanent part-time employees.

(21) the granting of employment preference to severely handicapped persons; this includes the right to provisional appointment without competitive examination for periods up to four months and the granting of eligibility to a severely handicapped person provisionally appointed under the rules who demonstrates ability to perform the job for permanent appointment without competitive examination; provisional employment under this paragraph may not exceed four months during a 12-month period; "severely handicapped" as used in this paragraph means persons certified by the director of the division of vocational rehabilitation to be severely handicapped;

(22) the establishment of programs facilitating the employment of disadvantaged persons;

(23) the delegation, when feasible, of personnel responsibilities and duties to the principal departments of the executive branch;

(24) the establishment of a transition period of up to 12 months for an employee to be reappointed to a classified position if the employee's position is withdrawn from the partially exempt or exempt service and placed in the classified service;

(25) other rules and administrative regulations, not inconsistent with this chapter, that are necessary for its enforcement. (§ 13 ch 144 SLA 1960; am § 1 ch 130 SLA 1961; am § 1 ch 147 SLA 1962; am § 1 ch 117 SLA 1966; am § 1 ch 33 SLA 1967; am § 3 ch 226 SLA 1970; am § 1 ch 39 SLA 1971; am § 3 ch 42 SLA 1971; am § 1 ch 21 SLA 1973; am § 1 ch 27 SLA 1976; am § 1 ch 4 SLA 1978; am § 2 ch 67 SLA 1979; am § 38 ch 94 SLA 1980; am §§ 1, 2 ch 89 SLA 1982; am § 14 ch 112 SLA 1982)

Revisor's notes. — AS 39.25.150 was also amended by §§ 1 and 2, ch. 89, SLA 1982. That chapter amended former paragraphs (6) and (9). However, ch. 112, SLA 1982 is given effect here since it was enacted later than ch. 89, SLA 1982 and is a comprehensive repeal and reenactment of this section.

Cross references. — For the pay plan prepared under (2) of this section, see AS 39.27.011.

Effect of amendments. — The 1980 amendment substituted "November 7, 1975" for "a date to be determined by the legislature which shall be on or about six

months after the termination of hostilities involving forces of the United States in Viet Nam" near the middle of paragraph (23), and substituted a semicolon for a period at the end of paragraph (23).

The first 1982 amendment added "including the granting of employment preference to local residents in accordance with AS 39.25.181 or under appropriate circumstances" to the end of paragraph (6) and "including the granting of employment preference to local residents in accordance with AS 39.25.181" to the end of paragraph (9).

The second 1982 amendment rewrote this section.

NOTES TO DECISIONS

The scope of rules prepared pursuant to AS 39.25.050 is limited severely in this section, leaving the director of personnel very little discretion and virtually no policy-making power.

Kelly v. Zamarelli, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Chapter attempts to ensure most efficient expenditure of public funds.

— This chapter and the personnel rules attempt to ensure the state and its taxpayers that public funds will be spent in their most efficient manner. *State v. Bogenrief*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

This section and personnel rule 7.05 prescribe the only manner in which the state may become obligated to pay for overtime performed by a classified service employee. *State v. Bogenrief*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

A public employee is not entitled to payment for overtime in the absence of a valid contract executed pursuant to statutes or regulations specifically authorizing such compensation in addition to the employee's fixed monthly salary. *State v. Bogenrief*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

When employee entitled to compensation for overtime. — This chapter and the applicable regulations adopted thereunder do not entitle an employee in the classified service, who is paid a fixed monthly salary, to receive any compensation for overtime, either in the form of cash or compensatory leave time unless: He is a member of the class eligible to receive overtime payment under personnel rule 7.052; he has worked hours in excess of his scheduled hours; and his appointing authority has authorized in writing payment for such overtime work. Even if these conditions are satisfied, personnel rule 9.04 stipulates that the employee is entitled to overtime pay only at his hourly rate. *State v. Bogenrief*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

The establishment of normal working hours and provision for compensatory time off for work beyond those hours do not, themselves, give the employee a right to payment for overtime. *State v. Bogenrief*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

Requirement of an express written authorization for payment for overtime cannot be circumvented by the implied contract theory. *State v. Bogenrief*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

Collateral references. — Power to suspend or lay off public officers for a tempo-

A public employee undertakes to perform the duties of his position, whether those duties or the hours necessary to perform them, are increased or decreased. *State v. Bogenrief*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

When a public servant is paid by time, for example by the month, rather than by the quantity of work performed, he is expected to perform his duties without extra compensation for overtime or holiday hours worked. This chapter and the personnel regulations are reflective of the widely accepted policy. *State v. Bogenrief*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

The regulatory scheme under this section and personnel rule 7.05 centralizes decision-making power with respect to overtime in the appointing authority who presumably has a broad view of the department's needs and is shielded from dangers of favoritism by his distance from the particular employee. *State v. Bogenrief*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

Right of probationary employee to appeal dismissal. — The intended scope of AS 39.25.150 as and its relation to paragraph (7) of this section is of sufficient importance to warrant legislative review in order that any potential ambiguity in the Personnel Act in regard to the question of whether a probationary employee in the classified service has the right to appeal his dismissal to the personnel board may be avoided. *Mueller v. Alaska State Bd. of Personnel*, Sup. Ct. Op. No. 396 (File No. 738), 425 P.2d 145 (1967), decided prior to the first 1971 amendment to this section.

Any ambiguity in personnel rule in regard to the right to appeal a dismissal to the personnel board should be resolved in favor of an employee who was promoted from a position in which he had (or subsequently attained) permanent status. *Mueller v. Alaska State Bd. of Personnel*, Sup. Ct. Op. No. 396 (File No. 738), 425 P.2d 145 (1967), decided prior to the first 1971 amendment to this section.

rary period without pay is an economy and not a disciplinary measure. 11 M.B. 342.