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285

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2-24-88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY
FINANCE

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

5/1/87
Mr. President:

DATE TURNED INTO OFFICE 3/23/88

STATE AFFAIRS Committee considered SB 285

leave for district court judges.

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____
- letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

Joe Josephson

OTHER RECOMMENDATIONS
L. Fanning, No Rec.

[Signature]
Chairman signature and recommendation

Committee Backup Attached

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Bill Version: SB 285
 Publish Date: 3-4-88

Revision Date: Agency Affected: Alaska Court System
 Title: An act relating to leave for district court judges 3RU: Trial Courts

Sponsor: Judiciary Committee Components:
 Requestor: State Affairs

EXPENDITURES/REVENUES:	(Thousands of Dollars)					
	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL

REVENUE

FUNDING:	(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Jan Strandberg* General Counsel Phone: 264-8228
 Division: Alaska Court System Date: 03/05/88

Approved by: *Arthur H. Snowden, II* Administrative Director Date: 03/05/88
 Agency: Alaska Court System

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

March 17, 1988

303 K Street
Anchorage, AK 99501
(907) 264-8228

Senator Mitch Abood
Chair
Senate State Affairs
P.O. Box V
Juneau, Alaska 99811

Re: Senate Bill 285

Dear Senator Abood:

Thank you for hearing this bill yesterday. Senator Hensley asked whether rural judges would be affected differently than urban judges by the passage of this bill. The effect of the bill is based on the seniority of the judge. Of the fifteen full-time district court judges, six now accrue over thirty days' leave. Four of these judges are located in Anchorage and two in Fairbanks. Six district court judges accrue exactly thirty days' leave. These judges are located in Juneau and Anchorage. Three judges presently accrue fewer than thirty days' leave. These judges are located in Ketchikan, Palmer and Fairbanks.

This bill would affect those six district court judges who accrue over thirty days' leave by limiting their leave accrual and carry-over to thirty days. It would not affect the six judges who accrue thirty days leave now and it would positively affect the three judges who now accrue fewer than thirty days' leave.

If you have any questions or if I can provide you with further information, please let me know.

Very truly yours,


Janalee R. Strandberg
Staff Counsel

JRS:hr

cc: Senator Rick Uehling
Senator Willie Hensley
Senator Joe Josephson
Senator Ken Fanning



Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

RECEIVED
FEB 22 1988

RECEIVED
FEB 21 1988

JANALEE R. STRANDBERG
Staff Counsel

February 19, 1988

303 K Street
Anchorage, AK 99501
(907) 264-8228

Senator Abood
Chair
Senate State Affairs
P.O. Box V
Juneau, Alaska 99811

Re: Senate Bill 285 - An Act relating to leave
for district court judges


Dear Senator Abood:

Thank you for meeting with me Wednesday on this bill as well as on SB 328. SB 285 would change the leave system for district court judges from classified service to the leave system for superior court and appellate judges established in Administrative Rule 28. District court judges now accrue leave at the same rate as classified employees. They may carry over unlimited leave from year to year and are paid for their accrued leave at the time of resignation or retirement. Other judges accrue leave at 2.5 days per month, their leave carry-over is limited to thirty days and sick leave is not charged to their leave balances. I am enclosing Karla Forsythe's comparison of the two leave systems for your review.

This bill would ease the administration of leave systems by consolidating all judicial leave within one system. The cost of judicial leave under both systems is charged to the court system as a percentage of gross payroll. This bill would not change the way leave costs are charged nor would it have a fiscal impact.

I would be happy to discuss this further with you or answer any questions you may have.

Very truly yours,


Janalee R. Strandberg
Staff Counsel

JRS:hr

Attachment

ALASKA COURT SYSTEM
Comparison of Judicial Leave Systems

Classified	Exempt										
1. Authority -	*										
AS 39.20.200	* Administrative Rules of Court #28										
2. Eligibility -	*										
District Court Judges	* Superior Court and Appellate Court Judges, and Supreme Court Justices										
3. Accrual Rates -	*										
<table border="0" style="display: inline-table; vertical-align: top;"> <tr> <td style="padding-right: 20px;">Service in Years</td> <td style="padding-right: 20px;">Maximum Accrual in Days</td> </tr> <tr> <td>0 - 2</td> <td>24.00</td> </tr> <tr> <td>2+ - 5</td> <td>27.00</td> </tr> <tr> <td>5+ - 10</td> <td>30.00</td> </tr> <tr> <td>10+ -</td> <td>36.00</td> </tr> </table>	Service in Years	Maximum Accrual in Days	0 - 2	24.00	2+ - 5	27.00	5+ - 10	30.00	10+ -	36.00	* In year of appointment, accrued at the rate of 2.5 days per month
Service in Years	Maximum Accrual in Days										
0 - 2	24.00										
2+ - 5	27.00										
5+ - 10	30.00										
10+ -	36.00										
	* Entitled to 30 days each year										
	* In year of termination, accrued at the rate of 2.5 days per month										
4. Maximum Leave Carryover -	*										
Unlimited carryover	* 30 days										
5. Terminal Leave Payoff -	*										
Accumulated leave balance paid off at termination at current rate of pay	* None										
6. Usage -	*										
Annual leave charged to leave balance	* Annual leave charged to leave balance										
Sick leave charged to leave balance	* Sick leave not charged to leave balance										
7. Cost to State -	*										
Charged to Court as a percentage of gross payroll	* Charged to Court as a percentage of gross payroll										

③



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-8228

February 13, 1987

SB-285
SB 328
SB 341
See Sub Comm.

Senator Jay Kerttula
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Senator Kerttula:

As I discussed with Beth, I have attached proposed legislation which would include district court judges within the leave system established by Administrative Rule 28, rather than within the statutory system applicable to classified state employees.

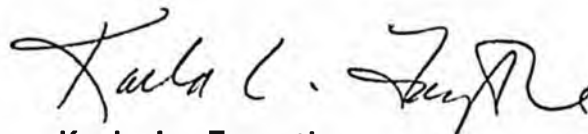
The district court judges have requested this change so that all judges may be grouped under the same leave system. Under the classified system, the district court judges accrue leave at the same rate as classified employees, and are entitled to unlimited carryover of leave from year to year. Under Administrative Rule 28, leave for all other judges is limited to 2.5 days per month, with leave carryover limited to 30 days, but with sick leave not charged to the leave balance. Under both system, leave costs are charged to the court system as a percentage of gross payroll. This change will have no fiscal impact.

I have enclosed background information supporting this proposal, including a comparison of the two leave systems, a copy of Administrative Rule 28 and a proposed draft. I have also enclosed a letter from the Department of Administration, which indicates no fiscal impact on that department.

Senator Jay Kerttula
February 13, 1987
Page Two

Thank you for considering this proposal. I will be glad to answer any questions or provide additional information.

Sincerely,



Karla L. Forsythe
Staff Counsel

KLF:bs

Att.

cc: Arthur H. Snowden, II, Administrative Director
Judge Michael White
Robert Fisher, Fiscal Officer

2/2/87-4

ALASKA COURT SYSTEM
Comparison of Judicial Leave Systems

Classified	*	Exempt
1. Authority -	*	
AS 39.20.200	*	* Administrative Rules of Court #28
	*	
2. Eligibility -	*	
District Court Judges	*	* Superior Court and Appellate * Court Judges, and Supreme Court * Justices
	*	
3. Accrual Rates -	*	
Service in Years	*	* In year of appointment, accrued * at the rate of 2.5 days per month
0 - 2	*	* Entitled to 30 days each year
2+ - 5	*	
5+ - 10	*	* In year of termination, accrued * at the rate of 2.5 days per month
10+ -	*	
	*	
	*	
4. Maximum Leave Carryover -	*	
Unlimited carryover	*	* 30 days
	*	
5. Terminal Leave Payoff -	*	
Accumulated leave balance paid off at termination at current rate of pay	*	* None
	*	
	*	
6. Usage -	*	
Annual leave charged to leave balance	*	* Annual leave charged to leave * balance
Sick leave charged to leave balance	*	* Sick leave not charged to leave * balance
	*	
	*	
7. Cost to State -	*	
Charged to Court as a percentage of gross payroll	*	* Charged to Court as a percentage * of gross payroll

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SUPPLEMENT

§ 23.35.070 LABOR AND WORKERS' COMPENSATION § 23.40.210

Chapter 35. Commercial Fishermen's Fund.

Section

110. Contract for care

Sec. 23.35.070. Benefits.

Opinions of attorney general. — Chiropractors render medical services and are entitled to recover payment under the Fishermen's Fund. August 23, 1971, Op. Att'y Gen.

Sec. 23.35.100. Transportation, hospital, nursing, medical and surgical expenses.

Opinions of attorney general. — Chiropractors render medical services and are entitled to recover payment under the Fishermen's Fund. August 23, 1971, Op. Att'y Gen.

Sec. 23.35.110. Contracts for care. In carrying out this chapter, the department may enter into contracts or other arrangements with hospitals and doctors in the state for furnishing care on an annual basis to persons entitled to benefits. Contracting under this section is governed by AS 36.30 (State Procurement Code). (§ 6 ch 100 SLA 1951; am § 22 ch 106 SLA 1986)

Effect of amendments. — The 1986 amendment, effective January 1, 1988, added the last sentence.

Chapter 40. Labor Organizations.

Article 2. Public Employment Relations Act.

Sec. 23.40.210. Agreement.

NOTES TO DECISIONS

Constitutionality. — This section's cost-of-living wage differentials do not violate the federal constitution's commerce clause since Alaska acted as a "market participant" rather than as a "market regulator." *International Org. of Masters, Mates & Pilots, Pac. Maritime Region v. Andrews*, 626 F. Supp. 1271 (D. Alaska 1986).

Because the existence and amount of the wage differentials imposed under this section reasonably further a legitimate state purpose, the wage differentials do not violate the equal protection clause of the fourteenth amendment. *International Org. of Masters, Mates & Pilots, Pac. Mar-*

itime Region v. Andrews 626 F. Supp. 1271 (D. Alaska 1986).

Imposing wage differentials according to Alaska Marine Highway System (AMHS) employee's states of residence did not infringe on their "right to travel" guaranteed by the fourteenth amendment since the wage adjustments do not penalize AMHS employees for migrating to or emigrating from Alaska. *International Org. of Masters, Mates & Pilots, Pac. Maritime Region v. Andrews*, 626 F. Supp. 1271 (D. Alaska 1986).

This section's wage differentials do not violate the privileges and immunities clause because the interest "burdened" by

this section's wage differentials is not "fundamental" in nature, and even if this interest were fundamental for purposes of privileges and immunities analysis, Alaska has a substantial interest in eliminating disincentives that discourage Alaska Marine Highway System employees from residing in the state, and its wage differentials bear a "substantial relationship" to its objective of eliminating, or at least minimizing, these disincentives. *International Org. of Masters,*

Mates & Pilots, Pac. Maritime Region v. Andrews, 626 F. Supp. 1271 (D. Alaska 1986).

Statutory violations. — Exclusion of grievances involving involuntary transfers from binding arbitration in a provision of the collective bargaining agreement between the state and a union, the Public Safety Employees Association, violates this section. *Hemmen v. State, Dep't of Pub. Safety*, Ct. App. Op. No. 2999 (File No. S-585), 710 P.2d 1001 (1985).

Sec. 23.40.225. Exemption from Public Employment Relations Act.

Opinions of attorney general. — This section does not supplant 18.80.220(a), a general provision against religious discrimination, nor does it violate the "establishment clause" of the Alaska Constitu-

tion where the non-associational rights of all public employees are secured by AS 18.80.220(a). January 13, 1984 Op. Att'y Gen.

§ 23.40.210 LABOR AND WORKERS' COMPENSATION § 23.40.215

Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Sec. 23.40.210. Agreement. Upon the completion of negotiations between an organization and a public employer, if a settlement is reached, the employer shall reduce it to writing in the form of an agreement. The agreement may include a term for which it will remain in effect, not to exceed three years. The agreement shall include a pay plan designed to provide for a cost-of-living differential between the salaries paid employees residing in the state and employees residing outside the state. The plan shall provide that the salaries paid, as of August 26, 1977, to employees residing outside the state shall remain unchanged until the difference between those salaries and the salaries paid employees residing in the state reflects the difference between the cost of living in Alaska and living in Seattle, Washington. The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency. (§ 2 ch 113 SLA 1972; am § 1 ch 62 SLA 1977)

NOTES TO DECISIONS

Applied in *Hafling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 23.40.212. Agreement with the Board of Regents. (a) The Board of Regents of the University of Alaska may delegate to the Department of Administration its authority under AS 23.40.070 — 23.40.260 to negotiate with an organization for an agreement.

(b) The Department of Administration shall participate in the negotiations between the Board of Regents and an organization. An agreement between the board and an organization requires the approval of the department. (§ 1 ch 148 SLA 1978)

Sec. 23.40.215. Funding and legislative approval. (a) The monetary terms of any agreement entered into under the Public Employment Relations Act are subject to funding through legislative appropriation.

(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session. The legislature shall advise the parties by concurrent resolution if it approves or disapproves of the monetary terms within 60 legislative days after the agreement is submitted to the legislature. The approval of the monetary terms of an agreement under this subsection

Sec. 23.40.010. Union contracts with state and political subdivisions. [Repealed, § 5 ch 113 SLA 1972.]

Sec. 23.40.020. Enforcement of certain contracts only if union registers. A labor contract executed in this state by a labor organization that has no local in this state or which contract is not to be executed by one or more of its locals in this state may not be enforced in the courts of this state unless the labor organization has registered with the department and complied with all regulations adopted by it. (§ 4 ch 108 SLA 1959)

Sec. 23.40.030. Definition of labor organization. For the purpose of AS 23.40.020 — 23.40.040 "labor organization" includes an organization constituted wholly or partly to bargain collectively or deal with employers, including the state and its political subdivisions, concerning grievances, terms, or conditions of employment or other mutual aid or protection in connection with employees. (§ 1 ch 108 SLA 1959; am § 32 ch 53 SLA 1973)

Collateral references. — 48 Am. Jur. 2d, Labor and Labor Relations, § 46.
51 C.J.S., Labor Relations, §§ 43-45, 56
C.J.S., Master and Servant, § 28(15).
Rights and remedies of workmen blacklisted by labor union, 46 ALR2d 1124.

Combination of separate plants or units of the same employer as single bargaining unit, 12 ALR3d 787.

Right of labor union to exclude applicants for membership and remedies of applicant so excluded, 33 ALR3d 1305.

Sec. 23.40.040. Collective bargaining agreement. The commissioner of transportation and public facilities or an authorized representative, in accordance with AS 23.40.020 — 23.40.030, may negotiate and enter into collective bargaining agreements concerning wages, hours, working conditions and other employment benefits with the employees of the division of marine transportation engaged in operating the state ferry system as masters or members of the crews of vessels or their bargaining agent. A collective bargaining agreement is not final without the concurrence of the commissioner of transportation and public facilities. The commissioner of transportation and public facilities may make provision in the collective bargaining agreement for the settlement of labor disputes by arbitration. (§ 1 ch 93 SLA 1962; am E. O. No. 39, § 11 (1977))

NOTES TO DECISIONS

This section was not repealed by implication by the enactment of the Public Employment Relations Act, AS 23.40.070, et seq. *Halling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Nor is it an exception to that act. —

This section cannot be read as an implied exception to the Public Employment Relations Act, AS 23.40.070, et seq. *Halling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

The Public Employment Relations Act.

AS 23.40.070 et seq., was intended to incorporate existing collective bargaining agreements rather than exempt them. *Hafling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Construed in pari materia. — Since this section cannot be treated as an implied exception to the Public Employment Relations Act, AS 23.40.070 et seq., and since the Public Employment Relations Act did not repeal this section by implication, the statutes are construed in pari materia. *Hafling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This section and Public Employment Relations Act can be harmonized. — The Public Employment Relations Act, AS 23.40.070, et seq., and this section can be effectively harmonized to further the legislative purpose of establishing uniform procedures for public employee collective bargaining and to protect the policies the legislature thought important in enacting the Public Employment Relations Act. *Hafling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Any possible conflict between this section and the Public Employment Relations Act is neither severe nor irreconcilable, particularly in light of AS 23.40.240 which incorporates existing agreements. *Hafling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

The most reasonable construction, consistent with the implied exception rule, is that the legislature was aware of this section and saw no inconsistency in enacting the Public Employment Relations Act, AS 23.40.070 et seq., to provide guidelines and

procedures for public employee collective bargaining. The Public Employment Relations Act does nothing to undercut the authorization of collective bargaining under this section. Rather, it gives it additional content. *Hafling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This section was comprehensive when it was enacted. *Hafling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

But it was further defined by the Public Employment Relations Act, AS 23.40.070, et seq. *Hafling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

The Public Employment Relations Act, AS 23.40.070, et seq., contains far more detailed provisions than this section. *Hafling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Public Employment Relations Act, AS 23.40.070 et seq., applies to employees of the state division of marine transportation. *Hafling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

If there is no implied exemption for ferry personnel under the Public Employment Relations Act, AS 23.40.070, et seq., it cannot be said that the two acts do not cover the same people. This section is a subset of the broader Public Employment Relations Act coverage and was likely left intact deliberately to designate the commissioner of public works as the state's representative in bargaining with the ferry unions. *Hafling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 1787-1999.

51 C.J.S., Labor Relations, §§ 148-216, 56 C.J.S., Master and Servant, §§ 28(20)-28(42).

Secs. 23.40.045 — 23.40.060. Records; local labor organizations; interference in chartering prohibited; civil enforcement; exemptions; penalties. [Repealed, § 55 ch 69 SLA 1970.]

Sec. 39.20.190. Definitions. In AS 39.20.110 — 39.20.190

(1) "employee" or "state employee" means a person employed by a state agency;

(2) "official" or "state official" means the appointive head of a state agency;

(3) "official travel" means travel inside or outside the state on official business of the state, for which payment or reimbursement is expected or authorized;

(4) "per diem allowance" means a daily flat rate of payment instead of actual expenses;

(5) "state agency," "agency," or "department" means department, office, institution, board, commission, bureau, division, or other administrative unit forming the state government;

(6) "subsistence" means lodging, meals, and other necessary expenses incidental to the personal sustenance or comfort of the traveler;

(7) "traveler" means the official or employee engaged in official travel for the state. (§ 3 ch 60 SLA 1957)

Article 3. Leaves of Absence.**Section**

- 200. Computation of personal leave
- 210. Determining years of service
- 220. Requirement that employment be continuous
- 225. Use of personal leave
- 240. Accumulation of personal leave
- 245. Donation of leave
- 250. Terminal leave
- 255. Conversion of accrued annual leave to personal leave
- 256. Transfer of accrued medical leave
- 270. Court leave

Section

- 290. Definition of days of leave
- 295. Special regulations on leave period
- 300. Personal and banked medical leave transfers with officer or employee
- 310. Exceptions
- 320. Adoption of regulations
- 330. Departments to keep leave records
- 340. Leave of absence for reserve or auxiliary members of armed forces
- 350. Restoration of reserve members to former positions

Sec. 39.20.200. Computation of personal leave. Officers and employees of the state are entitled to personal leave with pay that accrues as follows:

(1) two days for each full monthly pay period in the case of officers and employees with less than two years of service;

(2) two and one-quarter days for each full monthly pay period in the case of officers and employees with two but less than five years of service;

(3) two and one-half days for each full monthly pay period in the case of officers and employees with five but less than 10 years of service;

(4) three days for each full monthly pay period in the case of officers and employees with 10 years or more service. (§ 11-5-6 a ACLA 1949;

am § 1 ch 182 SLA 1957; am § 1 ch 145 SLA 1960; am § 10 ch 148 SLA 1976; am § 1 ch 136 SLA 1978)

Collateral references. — 63A Am. Jur. 2d, Public Officers and Employees, §§ 167, 476.

Sec. 39.20.210. Determining years of service. In determining years of service for the purpose of computing personal leave, all service with the Territory and State of Alaska is included. A change in the rate of accrual of personal leave by an officer or employee takes effect upon the beginning of the monthly pay period following the monthly pay period in which the officer or employee completes the prescribed period of service. (§ 11-5-6 b ACLA 1949; am § 1 ch 182 SLA 1957; am § 1 ch 145 SLA 1960; am § 2 ch 136 SLA 1978)

Sec. 39.20.220. Requirement that employment be continuous. Notwithstanding AS 39.20.200, an officer or employee is entitled to personal leave only after having been employed currently for a continuous period of 30 days under one or more appointments without break in service. When an officer or employee completes a period of continuous employment of 30 days, an amount of personal leave is credited to the officer or employee equal to the amount which, but for this section, would have accrued under AS 39.20.200 during the period. (§ 11-5-6 c ACLA 1949; am § 1 ch 182 SLA 1957; am § 1 ch 145 SLA 1960; am § 3 ch 136 SLA 1978)

Sec. 39.20.225. Use of personal leave. (a) An officer or employee may take personal leave at any time business permits upon permission by the head of the department or agency for which the officer or employee works.

(b) An officer or employee may take personal leave for medical reasons, regardless of whether business permits, upon permission by the head of the department or agency for which the officer or employee works. A department or agency head shall grant personal leave for medical reasons if the department or agency head is satisfied that the officer or employee is absent for medical reasons. The taking of personal leave for medical reasons shall be reduced by the amount of wage continuation payments made under the Alaska Workers' Compensation Act (AS 23.30). The following constitute "medical reasons" and are subject to the conditions noted:

(1) Medical disability of an officer or employee is a medical reason for taking personal leave. A department or agency head may require a doctor's certificate showing the disability if the absence exceeds three consecutive working days.

(2) Medical disability of a member of an officer's or employee's immediate family is a medical reason for taking personal leave if the

disability is such that the attendance of the officer or employee is required. A department or agency head may require a doctor's certificate showing the disability if the absence exceeds three consecutive working days.

(3) A medical condition of an officer or employee that makes presence at work a danger to the health of fellow employees is a medical reason for taking personal leave. A department or agency head may require a doctor's certificate showing the condition if the absence exceeds three consecutive working days.

(4) Pregnancy and childbirth is a medical reason for a female officer or employee to take personal leave. A female officer or employee, otherwise qualified for a leave of absence, is entitled to take a maximum of nine weeks leave immediately preceding and following childbirth. If the officer's or employee's accrued personal leave is insufficient for this purpose, the officer or employee is entitled to take leave without pay for the balance of the nine-week period.

(5) Death of a member of an officer's or employee's immediate family is a medical reason for taking personal leave. No more than five days of personal leave may be taken for this purpose.

(c) Each officer and employee shall, during each 12-month period, take at least five days of personal leave. If the officer or employee does not take at least five days of personal leave during a 12-month period, the difference between five days and the amount of personal leave taken shall be canceled without pay unless the department or agency head certifies in writing that the officer or employee was denied the opportunity to take five days of personal leave during the 12-month period. (§ 4 ch 136 SLA 1978)

Sec. 39.20.230. When annual leave may be taken. [Repealed, § 15 ch 136 SLA 1978. For current law see AS 39.20.225.]

Sec. 39.20.240. Accumulation of personal leave. Except as provided in AS 39.20.225(c) personal leave that is not taken by an officer or employee during a 12-month period accumulates for use in succeeding 12-month periods. (§ 11-5-6 e ACLA 1949; am § 1 ch 182 SLA 1957; am § 1 ch 145 SLA 1960; am § 1 ch 37 SLA 1967; am § 1 ch 31 SLA 1971; am § 1 ch 151 SLA 1972; am § 5 ch 136 SLA 1978)

Sec. 39.20.245. Donation of leave. (a) An officer or employee may donate one or more days of personal leave a year to the memorial scholarship revolving loan fund, or to a scholarship account in the fund, under AS 14.43.250 — 14.43.325. The commissioner of administration shall pay to the account of the memorial scholarship revolving loan fund, or to a scholarship account in the fund, an amount equal to the value of the day or days of personal leave contributed by the officer or employee.

(b) An officer or employee, with the approval of the person authorizing the employment, may donate accrued personal or annual leave to another officer or employee only for use as leave for medical reasons. The official responsible for employee accounts shall debit the donor's personal or annual leave account and credit the donee's personal leave account, or sick leave account, as appropriate, for medical reasons only, by converting the donated leave into cash value at the donor's rate of pay and reconverting the cash value to hours of leave at the donee's rate of pay. Leave donated under this subsection is not leave taken by the donor for purposes of AS 39.20.225(c). An employee who is covered by a collective bargaining agreement may donate leave to or receive donations of leave from an employee or officer who is not covered by a collective bargaining agreement, notwithstanding AS 39.20.310(8) and (9). (§ 2 ch 33 SLA 1969; am § 23 ch 136 SLA 1974; am § 6 ch 136 SLA 1978; am § 1 ch 75 SLA 1981; am § 1 ch 1 SLA 1985)

Effect of amendments. — The 1985 amendment in subsection (b) in the first sentence inserted "officer or" in two places and "or annual," deleted "of the legislature or of a legislative agency" following "employee" in two places, and made minor

punctuation changes; in the second sentence inserted "or annual" and "or sick leave account, as appropriate," and deleted "legislative" following "official responsible for"; and added the last sentence.

Sec. 39.20.250. Terminal leave. (a) Terminal leave for unused personal leave shall be allowed upon separation from service. The payment equals the compensation that the officer or employee would have received if the officer or employee had remained in the service until the expiration of the period of unused personal leave. A payment of terminal leave to an employee shall be made as a lump sum payment or in installments over a period of time, as the employee elects.

(b) If the officer or employee is re-employed in the state service before the expiration of the period covered by the balance of the unused leave payment, the officer or employee shall refund to the state an amount equal to the leave payment covering the period between the date of re-employment and the expiration of the unused leave period which has been paid. The leave represented by a refund shall be recredited to the officer or employee by the employing department or agency.

(c) The payment authorized by this section is not considered salary or compensation except for purposes of taxation. (§ 11-5-6 f ACLA 1949; am § 1 ch 182 SLA 1957; am § 1 ch 145 SLA 1960; am § 7 ch 136 SLA 1978; am § 1 ch 16 SLA 1979)

Opinions of attorney general. — Application to judicial and permanent legislative employees of the general laws of the state covering leave, including the De-

partment of Administration's regulation on terminal leave, does not infringe upon the power of the judicial and legislative branches to supervise, hire, or discharge

personnel, or the power to determine employee salaries. April 9, 1985 Op. Att'y Gen.

Sec. 39.20.255. Conversion of accrued annual leave to personal leave. An officer or employee who has accrued annual leave shall have that annual leave transferred to the officer's or employee's personal leave account. (§ 8 ch 136 SLA 1978)

c. 39.20.256. Transfer of accrued medical leave. (a) An officer or employee who has accrued medical leave shall have 40 per cent of that medical leave transferred to the officer's or employee's personal leave account and 60 per cent of that medical leave transferred to a medical leave bank. Banked medical leave may be taken only in accordance with this section.

(b) An officer or employee may not take any banked medical leave unless the officer or employee

- (1) has no accrued personal leave; and
- (2) has a medical disability exceeding 10 consecutive working days in duration; or
- (3) has a medical disability exceeding 30 consecutive working days in duration.

(c) Once the requirements of (b) and (d) of this section have been met, an officer or employee may take banked medical leave until the medical disability is terminated or the banked medical leave is exhausted. If an officer or employee qualifies for banked medical leave under (b)(3) of this section, the banked medical leave may be taken for all working days of the medical disability following the 10th working day of the disability.

(d) When leave is taken under (b)(1) and (2) of this section, a department or agency head may require a doctor's certificate showing the disability. When leave is taken under (b)(3) of this section, the officer or employee must submit a doctor's certificate showing the disability.

(e) The taking of leave under this section shall be reduced by the amount of wage continuation payments made under the Alaska Workers' Compensation Act (AS 23.30).

(f) Upon an officer's or employee's separation from state service, the officer's or employee's banked medical leave shall be canceled without pay. (§ 8 ch 136 SLA 1978; am §§ 1 — 3 ch 52 SLA 1979)

Legislative history reports. — For SLA 1979), see 1979 House Journal, p. 1052.
the House State Affairs Committee letter of intent on Senate Bill No. 116 (ch. 52,

Sec. 39.20.260. Medical leave. [Repealed, § 15 ch 136 SLA 1978. For current law see AS 39.20.225(b).]

Sec. 39.20.270. Court leave. Notwithstanding AS 39.20.310(7), court leave shall be granted to an employee who is classified as full time, whether permanent, nonpermanent, or temporary. An officer or employee called to serve as a juror or subpoenaed as a witness is entitled to administrative leave with pay, but compensation received by the employee or to which the employee is entitled, whichever is greater, for service as a juror or witness shall be deducted from pay to which the employee is entitled as a state officer or employee. (§ 11-5-6 h ACLA 1949; am § 1 ch 182 SLA 1957; am § 1 ch 145 SLA 1960; am § 1 ch 39 SLA 1984)

Effect of amendments. — The 1984 amendment, in the first sentence, added "Notwithstanding AS 39.20.310(7)" at the beginning, inserted "nonpermanent" near the end, and, in the second sentence, substituted "the employee" for "him" in the first place it occurs and for "he" in the last two places it occurs.

Sec. 39.20.280. Maternity leave. [Repealed, § 2 ch 67 SLA 1974. For current law see AS 39.20.225(b)(4).]

Sec. 39.20.290. Definition of days of leave. The days of leave provided for in AS 39.20.200 — 39.20.330 mean days upon which an officer or employee would otherwise work and receive pay, and are exclusive of holidays. (§ 11-5-6 j ACLA 1949; am § 1 ch 182 SLA 1957; am § 1 ch 145 SLA 1960)

Sec. 39.20.295. Special regulations on leave period. In accord with the procedures established in AS 39.20.320, the Department of Administration shall adopt regulations defining and establishing a uniform beginning and a uniform concluding date for the 12-month periods applicable to leave use and accumulation by officers and employees of state government. (§ 2 ch 151 SLA 1972)

Sec. 39.20.300. Personal and banked medical leave transfers with officer or employee. When an officer or employee terminates employment with one department, office, institution, or agency of the state government and is employed by another department, office, institution, or agency of the state government without break in service, accumulated personal leave and banked medical leave also transfer and shall be credited to the officer or employee in the employing department, office, institution, or agency. (§ 11-5-6 k ACLA 1949; am § 1 ch 182 SLA 1957; am § 1 ch 145 SLA 1960; am § 9 ch 136 SLA 1978)

Sec. 39.20.310. Exceptions. AS 39.20.200 — 39.20.330 do not apply to

(1) members of the state legislature, the governor, the lieutenant governor, and justices and judges of the supreme and superior courts and of the court of appeals, but nothing in AS 39.20.200 — 39.20.330 may be construed to diminish the salaries fixed by law for these officers by reason of absence from duty on account of illness or otherwise;

(2) magistrates serving the state on less than a full-time basis;

(3) officers, members of the teaching staff, and employees of the University of Alaska;

(4) *[Repealed by § 76 ch 59 SLA 1982.]*

(5) persons employed in a professional capacity to make a temporary and special inquiry, study, or examination as authorized by the governor, the legislature, or a legislative committee;

(6) members of boards, commissions, and authorities who are not otherwise employed by the state;

(7) temporary employees hired for periods of less than 12 consecutive months;

(8) persons employed by the division of marine transportation as masters and members of the crews operating the state ferry system who are covered by collective bargaining agreements as provided in AS 23.40.040, except as expressly provided by law;

(9) persons employed by the state who are covered by collective bargaining agreements as provided in AS 23.40.210, except as expressly provided by law. (§ 11-5-61 ACLA 1949; am § 1 ch 182 SLA 1957; am § 1 ch 145 SLA 1960; am § 1 ch 134 SLA 1961; am § 4 ch 93 SLA 1962; am § 3 ch 24 SLA 1966; am § 1 ch 62 SLA 1972; am § 10 ch 136 SLA 1978; am § 26 ch 12 SLA 1980; am § 76 ch 59 SLA 1982; am §§ 2, 3 ch 1 SLA 1985)

Effect of amendments. — The 1985 amendment at the end of paragraphs (8) and (9) added "except as expressly provided by law."

NOTES TO DECISIONS

The thrust of the exemptions in the State Personnel Act, AS 39.25.110, the Public Employees Retirement System, former AS 39.35.680 (5)(c), and the statutory leave provisions for state employees is to

provide for those public employees who are not susceptible to ordinary recruiting and examining procedures. *Halling v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 39.20.320. Adoption of regulations. The director of the division of personnel in the Department of Administration shall prepare and submit regulations necessary to carry out the intent of AS 39.20.200 — 39.20.330. These regulations shall include provisions for crediting and, if necessary, converting accrued leave when an officer or employee transfers, without break in service, between a department or agency of the state government where the officer or employee

is subject to AS 39.20.200 — 39.20.330 and a department or agency of the state government where the officer or employee is not subject to AS 39.20.200 — 39.20.330. These regulations shall be submitted to the commissioner of administration. The commissioner of administration shall review the regulations and submit them to the personnel board. The regulations, or any part of the regulations, have the force and effect of law 30 days after they are submitted to the personnel board if not disapproved by the personnel board. Amendments to the regulations shall be prepared and submitted in the same manner, and have the force and effect of law 30 days after they are submitted to the personnel board, if not disapproved by the personnel board. The regulations adopted under AS 39.20.200 — 39.20.330 relate to the internal management of state agencies and their adoption is not subject to the provisions of the Administrative Procedure Act (AS 44.62). (§ 11-5-6 m ACLA 1949; am § 1 ch 182 SLA 1957; am § 1 ch 145 SLA 1960; am § 11 ch 136 SLA 1978; am § 77 ch 59 SLA 1982)

Sec. 39.20.330. Departments to keep leave records. Each department, office, institution, or agency of the state government shall keep for its files a complete leave record, covering each of its officers and employees, on forms prepared and supplied by the Department of Administration. These records are subject to annual audit and approval by the director of personnel of the Department of Administration. (§ 11-5-6 n ACLA 1949; am § 1 ch 182 SLA 1957; am § 1 ch 145 SLA 1960; am § 12 ch 136 SLA 1978)

Sec. 39.20.340. Leave of absence for reserve or auxiliary members of armed forces. (a) An employee of the state, or a political subdivision, with the approval of the city council or borough assembly, who is a member of a reserve or auxiliary component of the United States Armed Forces is entitled to a leave of absence without loss of pay, time or efficiency rating on all days during which the employee is ordered to training duty, as distinguished from active duty, with troops or at field exercises, or for instruction, or when under direct military control in the performance of a search and rescue mission. The leave of absence may not exceed 16½ working days in any 12-month period.

(b) If an employee is called to active duty by the governor, an employee otherwise qualified under (a) of this section is entitled to five days leave of absence without loss of pay, time, or efficiency rating. (§ 1 ch 20 SLA 1951; am § 1 ch 154 SLA 1970; am § 4 ch 151 SLA 1972; am § 1 ch 49 SLA 1976)