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HOUSE COMMITTEE REPORT

(7)
Date Referred: May 6, 1992

FURTHER REFERRALS:

Date of Committee Action: 5/9/92

The JUDICIARY Committee considered:

HB 588

HOUSE BILL NO. 588

PROTECT MERIT PRINCIPLE OF EMPLOYMENT

"An Act establishing a procedure for the review of the reorganization of agencies in the executive branch of state government for violations of the merit principle of employment and providing remedies for violations of the merit principle."

RECOMMENDATIONS:

be replaced with CSAB 588 (JUD) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) in accordance

zero fiscal note _____

zero fiscal note(s) Admin 5/16/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>David Douley</u>	✓	<u>Kevin Pat Farrell -</u>		✓	
<u>John Ebbert</u>	α	<u>Terrell Masten</u>		✓	
<u>Mark Stuenkel</u>	-	<u>Mark Stanley</u>		Y	

David Douley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 588

Revision Date: _____

Department Affected: Administration

Title: Review reorganizations for violation of merit principles.

BRU: Personnel/OEEO

Component: Personnel/OEEO

Sponsor: House Finance Committee

COMPONENT SERIAL NO.

0	0	5	6
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Requestor: House State Affairs

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	*	*	*	*	*	*
TRAVEL	*	*	*	*	*	*
CONTRACTUAL	*	*	*	*	*	*
SUPPLIES	*	*	*	*	*	*
EQUIPMENT	*	*	*	*	*	*
LAND & STRUCTURES	*	*	*	*	*	*
GRANTS, CLAIMS	*	*	*	*	*	*
MISCELLANEOUS	*	*	*	*	*	*
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL	*	*	*	*	*	*
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REVENUE FUND SOURCE:	*	*	*	*	*	*
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FUNDING: (Thousands of Dollars)

GENERAL FUND	*	*	*	*	*	*
FEDERAL FUNDS	*	*	*	*	*	*
OTHER FUND SOURCE:	*	*	*	*	*	*
TOTAL	*	*	*	*	*	*

POSITIONS:

FULL-TIME	*	*	*	*	*	*
PART-TIME	*	*	*	*	*	*
TEMPORARY	*	*	*	*	*	*

Estimate of current year impact: \$0

ANALYSIS: (Attach a separate page if necessary.)
The fiscal impact of HB 588 is indeterminate. See attached.

Prepared by: R. H. King
Division: Personnel/OEEO

Phone: 465-4430
Date: _____

Approved by Commissioner: Nancy Bear Usura
Agency: Administration

Date: 5/5/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 588

HB 588 would allow employees or former employees to complain to the Personnel Board that a reorganization in the Executive Branch violates the merit principle. This bill is based on the recent Investigative Report of the Ombudsman of the recent reorganization of the Division of Family and Youth Services. This bill would require investigations by the Personnel Board very similar to the one conducted by the Ombudsman. It is apparent from reading the Investigative Report that considerable time and resources of at least two people were involved.

This recent investigation is the only model for estimating the costs for the Personnel Board should this bill become law. However, there are considerable unknowns. To our knowledge, this reorganization is the only one in which a violation of the merit principle was a nontrivial charge. What volume of complaints can be expected? Will more complaints be filed with the Personnel Board than have been raised by employees' collective bargaining representative, or to the Ombudsman, or to the Attorney General (violation of the Personnel Act is a misdemeanor under Alaska Statute 39.25.)? Will complaints increase with the inevitable downsizing that will be required by falling revenue? Or was this a unique occurrence that will not be repeated for another 30 years? Will this Ombudsman's Investigative Report be a sufficient deterrent for five or ten years?

While the above questions make it impossible to estimate a cost for this bill, the department does not want to fall into the trap of having no appropriation committed to the costs and thus having the Personnel Board turn down complaints because "the resources of the board are insufficient for adequate investigation" (proposed AS 39.25.310, page 2, line 14 of the bill). We look forward discussions during the hearing process of an appropriate way to project and fund the costs.

HB 588 - Violations of the Merit Principle of Employment

Sectional Analysis

Section 1.

Sec. 39.25.300. Jurisdiction of the Personnel Board: Establishes the jurisdiction of the Personnel Board to investigate whether the merit principle has been violated by a state agency reorganization.

Sec. 39.25.310. Investigation of Complaints: Requires a complaint to be filed within one year of a reorganization or knowledge of a violation; requires a hearing officer to conduct an investigation unless

- a) complaint is outside the jurisdiction of AS 39.25.300-500;
- b) complainant does not have sufficient personal interest;
- c) complainant has not alleged sufficient facts to proceed;
- d) complaint is trivial or made in bad faith;
- e) board does not have adequate resources to investigate.

Sec. 39.35.320. Notice to Complainant: Hearing officer shall inform the complainant whether the board will investigate the complaint.

Sec. 39.25.330. Notice to Others: With some exceptions, if an investigation is undertaken, the hearing officer shall notify the agency and other employees affected by the reorganization.

Sec. 39.25.340. Investigation Procedures: The hearing officer shall investigate the complaint informally and, if the allegations are supported by substantial evidence, try to eliminate the merit principle violation by conference, conciliation and persuasion. Authorizes a hearing officer to make inquiries, inspect the premises of an agency, hold closed hearings, and have access to agency records, including confidential records. The hearing officer and the board shall maintain confidentiality regarding all matters and identities of complainants or witnesses.

Sec. 39.25.350. Stay of Personnel Actions: After a complaint is accepted for investigation, the board may issue a 30-day stay of implementation of all or part of the reorganization. The board may issue additional stays; an agency may petition the board for amendments to a stay.

Sec. 39.25.360. Subpoena Powers: The board may subpoena witnesses and records. The board may not subpoena records of active criminal investigations that reveal the identity of confidential police informants. If a person refuses to comply with a subpoena, the court may compel obedience.

Sec. 39.25.370. Procedure After Investigation: After the investigation, the hearing officer shall make a preliminary report as to whether the reorganization violated the merit principle of employment. If the principle has been violated, the report must include recommendations for correction of the violation. The board may adopt, amend or reject the findings of fact and the recommendations of the report. The report and recommendations become final 30 days after the report is issued unless the board acts on the report, or the complainant or the agency requests a hearing. The board shall hold the hearing at a place where the violation allegedly occurred; testimony shall be taken under oath. If the board determines that a violation

occurred, the board shall order appropriate corrective action. The board may order reinstatement of an employee, or may order the discipline of a state employee other than an elected official or a public officer subject to legislative confirmation. The preliminary report is confidential; a final order may be disclosed only after providing notice to the agency and complainant.

Sec. 39.25.380. Judicial Review and Enforcement: A complainant or agency may obtain judicial review of the order. The board may obtain a court order for the enforcement of its orders by filing a complaint with superior court.

Sec. 39.25.390. Referral to Attorney General: The board may refer a matter to the attorney general at any time in an investigation or hearing.

Sec. 39.25.500: Definitions.

HOUSE COMMITTEE REPORT

5-6-92
Judiciary

(7)
 Date Referred: April 29, 1992

FURTHER REFERRALS:

Date of Committee Action: 5/6/92

The STATE AFFAIRS Committee considered:

HB 588

HOUSE BILL NO. 588

PROTECT MERIT PRINCIPLE OF EMPLOYMENT

"An Act establishing a procedure for the review of the reorganization of agencies in the executive branch of state government for violations of the merit principle of employment and providing remedies for violations of the merit principle."

RECOMMENDATIONS:

be replaced with _____ the same title

have attached amendments(s) a new title

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

indeterminate
 fiscal impact Admin

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>		<i>Eugene H. Kibuna</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>		<i>David McCicchie / Choquette</i>			<input checked="" type="checkbox"/>
<i>[Signature]</i>		<i>[Signature]</i>			

Eugene H. Kibuna
 CHAIRMAN'S SIGNATURE
Eugene H. Kibuna

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

May 4, 1992

TO: Rep. Gene Kubina, Chair
House State Affairs Committee

FROM: Rep. Fran Ulmer

RE: HB 588, Violations of the merit principle in public employment

HB 588, relating to violations of the merit principle of employment, was introduced as a result of an audit performed by the State Ombudsman of the Division of Family and Youth Services. The audit concluded that a recent reorganization of DFYS was a politically motivated maneuver designed to subvert the merit system and to remove certain classified employees from their positions. The audit documents the manner in which plans were carefully laid to fire specified employees without regard to the merit of their performance on the job. In the pursuit of this goal, agency personnel deliberately misled the legislature regarding the purpose of the reorganization, the benefits to be derived, and the cost.

The stated purpose of the DFYS reorganization was to reduce unnecessary mid-management positions, save \$600,000, and use the savings to fund additional line workers who would deliver direct services to clients. The net result was purported to be an increased ability of the state to protect at-risk children and adults. In reality, the result of the reorganization was an annual increase in costs of \$361,343, a decrease in line workers, and 1100 fewer child abuse investigations performed each year.

HB 588 establishes the authority of the Personnel Board to investigate whether the merit principle has been violated by reorganization of a state agency. If a preliminary investigation indicates that a violation has probably occurred, the Board is authorized to try to eliminate the violation by conciliation. The preliminary report must include recommendations for correction of the violation. The Board may order appropriate corrective action. During an investigation, the Board may also issue a stay of implementation of the reorganization.

The merit principle of employment serves two purposes: (1) it ensures that public employment is based on effective performance of approved responsibilities; and (2) encourages the agency to evaluate agency/employee performance based on merit alone. It is impossible to separate the effective functioning of the agency from the employment of qualified, experienced personnel. The reorganization of DFYS resulted in the intentional elimination of competent

employees. The result is a serious loss of service in an agency providing some of the most critical public protection services in the state.

It is doubly onerous that the agency persisted in the reorganization despite the many inquiries and criticisms leveled at agency management by professionals and other knowledgeable persons in the field, including legislators, prior to its implementation. HB 588 will help prevent the same abuses from occurring in the future by providing the Personnel Board with the power to order corrective action and to implement a stay of implementation. If these powers had been in place last year, the reorganization of DFYS could have been required to meet closer scrutiny prior to implementation.



State of Alaska
ombudsman

Duncan C. Fowler

Reply to:

- P.O. Box 102636
Anchorage, AK 99510-2636
(907) 277-8848
(800) 478-2624
- P.O. Box WO
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970
- P.O. Box 74358
Fairbanks, AK 99707-4358
(907) 452-4001
(800) 478-3257

May 7, 1992

Representative Dave Donley, Chairman
House Judiciary Committee
State Capitol
Juneau, Alaska 99801-1182

RE: HB 588

Dear Representative Donley:

This bill was sent to your committee yesterday by the House State Affairs committee. It had support from the state's two largest unions. The administration stated they had no position as yet on the measure.

The genesis of this bill was a recently completed ombudsman investigation of the reorganization of the Division of Family and Youth Services (DFYS). I appreciate the support of the House Finance Committee representative Ulmer by introducing this measure. I know we are in the last weeks of this legislature. But, I believe HB 588 speaks to an important aspect of our responsibility to provide nonpartisan government services to all Alaskans.

My investigation of DFYS looked at the allegation that the agency had based its reorganization on incorrect information. Part of that review found the agency director had circumvented the principles of the merit system during the restructuring. This proposal provides an appeal mechanism for covered state employees when reorganizations are undertaken in contravention of our constitutionally mandated merit system.

This measure *does not prohibit nor constrain an agency from reorganizing* to improve its internal efficiency or to meet budget constraints. That ability is defined in AS 44.17.070 "Reorganization by Department Heads". HB 588 does require that personnel decisions made during a reorganization effort be made in compliance with our state merit principals as required in Article XII, Section 6 of the Alaska Constitution and defined in AS 39.25.010. It specifically does not deal with employees in the exempt or partially exempt service. New administrations must have the freedom to appoint individuals with certain skills and philosophies to form and implement its new policy directions and agendas.

All of us expect to see the number of state employees dramatically shrink over the next few years. This measure helps ensure future personnel reductions occur in concert with the merit principles. Our investigation showed how easy it is to use a reorganization effort to target specific merit employees and cause their positions to be removed. Unfortunately reasons for removal can well be for non-merit reasons as there is no standard appeal or review available to those affected. Political, personal and religious affiliations and associations could be the criteria for an administrator with a hidden agenda. This measure provides an appeal and

review to occur by the state personnel board. It gives the board the ability to take corrective action if necessary.

A quote from our DFYS investigation illustrates this concern clearly:

One of the basic tenets of the merit system is that classified employees shall be hired, evaluated, retained or promoted on the basis of their competency and job performance rather than their political associations or personal connections. Perceived manipulation of merit system principals for political ends has a chilling effect on the functioning of government agencies wherever and whenever it occurs. In an agency such as DFYS the potential harmful effects are simply too great for prudent managers to allow political considerations to become preeminent.

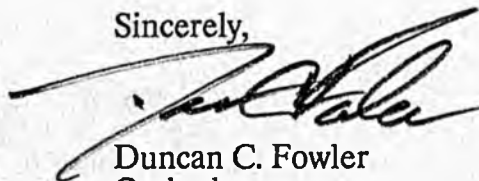
DFYS staff are required to make complex decisions in emotionally charged circumstances on a daily basis. If staff must be concerned that their decisions and actions can cause them to become targets of political reprisal the effect can be paralyzing. When classified managers are affected, subordinate staff may become afraid to act or may base critical casework decisions on an evaluation of political expediency rather than on the risk to a vulnerable client or the community.

In the DFYS reorganization effort, merit principals were not simply ignored but actively circumvented and subverted. The "targeted down-sizing" which occurred in DFYS has been highly visible and demoralizing within that agency and has been carefully watched by others.

As reduced revenues necessitate legitimate "down-sizing" in this agency or others, adequate mechanisms must be developed to ensure this reduction process is not used as a means of political restructuring. Protections are needed to ensure the "down-sizing" process does not become a means of eliminating divergent political perspectives to achieve political uniformity among government employees. If unchecked, such actions can be demoralizing to government employees and seriously compromise government services to citizens.

I have had the enclosed amendment drafted which resolves a concern brought by the Department of Law. I would urge the committee's favorable consideration of the amendment and this measure. There is no fiscal impact on my office. Copies of the Division of Family and Youth Services investigation were sent to each legislator's office. I was pleased that the agency in this case has agreed to implement my recommendation to review personnel actions that were taken during their last reorganization. If additional copies of this investigation are needed please let me know. I would be happy to answer any questions about this measure or the Office of the Ombudsman.

Sincerely,



Duncan C. Fowler
Ombudsman

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 588

Page 3, after line 19:

Insert a new subsection to read:

"(b) A stay of implementation may be granted only if it appears that

(1) the complainant or others affected by the reorganization are faced with irreparable harm;

(2) the harm to the agency by the granting of the stay does not outweigh the harm to the complainant or the others; and

(3) the complainant raises serious and substantial questions going to the merits of the case."

Reletter the remaining subsections accordingly.

Page 6, line 7, after "Alaska":

Insert ", including the description in AS 39.25.010(b)"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 588

Page 5, lines 8 - 9:

Delete "an elected public officer or a public officer confirmed by the legislature"

Insert "a public officer"

Page 5, line 12, after ".":

Insert "If the board finds that a public officer has violated the merit principle of employment, the board may recommend to the governor that the public officer be disciplined, including a recommendation of suspension or dismissal."

Page 6, line 10, after "(5)":

Insert new material to read:

""public officer" includes

- (A) an elected public officer;
- (B) a public officer confirmed by the legislature;
- (C) a person hired or appointed as the head or deputy head of a department in the executive branch or as a director of a division or independent agency within a department in the executive branch, an assistant to the governor, and the chair or member of a state commission or board;

(6)"



State of Alaska
ombudsman

Duncan C. Fowler

May 4, 1992

Representative Gene Kubina, Chairman
House State Affairs Committee
State Capitol
Juneau, Alaska 99801-1182

RE: HB 588

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- P.O. Box 74358
Fairbanks, AK 99707-4358
(907) 452-4001
(800) 478-3257

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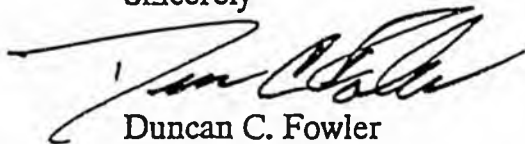
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Duncan C. Fowler
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