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TONY KNOWLES, GOVERNOR



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 10, 1995

The Honorable Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Pearce:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the appointment and removal of the commissioner of education.

Existing law provides that the commissioner of education is the principal executive officer of the Department of Education. Section 1 of the bill amends AS 14.07.145(a) to provide that the commissioner serves at the pleasure of the governor, as do commissioners of other state agencies.

Section 2 of the bill repeals an existing provision that permits the appointment of the commissioner for a term of office not to exceed five years, and repeals language providing for removal of the commissioner from office for cause. Additionally, sec. 2 of the bill repeals the definition of "cause" regarding removal of the commissioner.

Section 3 of the bill provides for an immediate effective date, in order to ensure that the next commissioner of education is appointed under the new terms, after the bill is enacted into law.

Article III, section 25 of the Alaska Constitution provides that heads of each principal department should serve at the pleasure of the Governor. The provision in current law permitting the use of long-term contracts in the hiring of the commissioner for the Department of Education thwarts the purpose of this section of the Constitution. I urge your prompt action on this important measure.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tony Knowles".

Tony Knowles
Governor

FISCAL NOTE

No. 1

Bill Version: SB83

(S) Publish Date: 2/10/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____
Title: "An Act Relating to the Appointment and Removal of the Commissioner of Education..."
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Office of the Governor
BRU: Executive Operations
Component: Executive Office
COMPONENT SERIAL NO. 0006

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES						
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CHANGE IN						
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: _____

ANALYSIS: (Attach a separate page if necessary.)
No fiscal impact

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

Phone: 465-3876
Date: 2/9/95

Approved by Commissioner: Jim Ayers, Chief of Staff
Agency: Office of the Governor

Date: 2/9/95

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9-GS0037F

Lauterbach

2/21/95

CS FOR SENATE BILL NO. 83(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the commissioner of education and the commissioner of fish and
2 game; and providing for an effective date."

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

4 * Section 1. AS 14.07.145(c) is amended to read:

5 (c) The commissioner may be appointed by the board for a term of office, but
6 the term of office may not have an expiration date that is later than the expiration
7 date of the current term of office of the person who is governor at the time the
8 appointment is made [NOT TO EXCEED FIVE YEARS]. The commissioner may be
9 removed during a term of office by four members of the board for cause as defined in this
10 section.

11 * Sec. 2. AS 44.39.030 is amended to read:

12 Sec. 44.39.030. APPOINTMENT AND TERM OF OFFICE OF
13 COMMISSIONER. The governor shall appoint the commissioner of fish and game from
14 a list of qualified persons nominated by the Board of Fisheries and the Board of Game

1 meeting in joint session, subject to the right of the governor to request additional
2 nominations. The appointment shall be confirmed by a majority of the members of the
3 legislature in joint session. The commissioner of fish and game serves for a term of
4 office set by the governor, but the term of office may not have an expiration date
5 that is later than the expiration date of the current term of office of the person who
6 is governor at the time the appointment is made [FIVE YEARS].

7 * Sec. 3. This Act applies to appointments made by the Board of Education and the governor,
8 as applicable, on or after the effective date of this Act.

9 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

9-GS0037K
Lauterbach
2/28/95

CS FOR SENATE BILL NO. 83(HES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

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A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the commissioner of education and the commissioner of fish
2 and game; and providing for an effective date."

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

4 * Section 1. AS 14.07.145(a) is amended to read:

5 (a) The board shall appoint the commissioner of education subject to the
6 approval of the governor. The commissioner is [SHALL BE] the principal executive
7 officer of the department and serves at the pleasure of the board.

8 * Sec. 2. AS 16.05.010 is amended to read:

9 Sec. 16.05.010. COMMISSIONER OF FISH AND GAME. The commissioner
10 is the principal executive officer of the Department of Fish and Game. The
11 commissioner shall be a qualified executive with knowledge of the requirements for
12 the protection, management, conservation, and restoration of the fish and game
13 resources of the state. [THE COMMISSIONER SHALL BE APPOINTED FOR A
14 TERM OF FIVE YEARS.]

1 * Sec. 3. AS 44.39.030 is amended to read:

2 Sec. 44.39.030. APPOINTMENT AND TERM OF OFFICE OF
3 COMMISSIONER. The governor shall appoint the commissioner of fish and game
4 from a list of qualified persons nominated by the Board of Fisheries and the Board of
5 Game meeting in joint session, subject to the right of the governor to request
6 additional nominations. The appointment shall be confirmed by a majority of the
7 members of the legislature in joint session. [THE COMMISSIONER OF FISH AND
8 GAME SERVES FOR A TERM OF FIVE YEARS.]

9 * Sec. 4. AS 14.07.145(c) and 14.07.145(f) are repealed.

10 * Sec. 5. This Act applies to appointments made by the Board of Education and the
11 governor, as applicable, on or after the effective date of this Act.

12 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

Current statute says that at the head of the Department of Education is the Board of Education:

AS 14.07.075 . Creation. There is created at the head of the Department of Education a Board of Education consisting of seven members.

Statute requires seven members, not more than four from the same political party as the governor. They are appointed by the governor and must be confirmed by the legislature.

AS 14.07.115 outlines removal provision for the Board of Education members:

"Members of the board serve at the pleasure of the governor. "

AS 14.07.145 talks about the Commissioner of Education's appointment and role as principal executive officer of the dept.

AS 14.07.145(a) The board shall appoint the commissioner of education subject to the approval of the governor. The commissioner shall be the principal executive officer of the department . *bill adds and serve's to the pleasure of the gov.*

AS 14.07.145(c) The commissioner may be appointed by the board for a term of office not to exceed five years. The commissioner may be removed during a term of office by four members of the board for cause as defined in this section.

bill amends

AS 14.07.145(f) in this section, "cause" means
(1) incompetency...
(2) immorality...crime, etc...
(3) malfeasance or misfeasance in office...

The Alaska Constitution does not directly address the Board of Education or the Commissioner of Education.

The Alaska Constitution addresses Department Heads in Article III, Section 25.

"The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state. The heads of all principal departments shall be citizens of the United States.

The Alaska Constitution addresses Boards and Commissions in Article III, Section 26.

"When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor."

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AS 14.07.145 talks about the Commissioner of Education's appointment and role as principal executive officer of the dept.

AS 14.07.145(a) The board shall appoint the commissioner of education subject to the approval of the governor. The commissioner shall be the principal executive officer of the department . *bill adds: and serves at the pleasure of the gov*

and is subject to confirmation by the legislature.

AS 14.07.145(c) The commissioner may be appointed by the board for a term of office not to exceed five years. The commissioner may be removed during a term of office by four members of the board for cause as defined in this section.

bill deletes

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(g) The department shall approve the association's constitution and bylaws to ensure that all regions of the state are treated on an equitable basis and in the best interests of the state. (§ 1 ch 128 SLA 1976; am § 45 ch 6 SLA 1984; am § 21 ch 14 SLA 1987; am § 10 ch 30 SLA 1992)

Revisor's notes. — Formerly AS 14.07.053 Renumbered in 1982

Effect of amendments. — The 1992 amendment, effective May 16, 1992, deleted an exception clause from the end of subsection (d)

Opinions of attorney general. — The Alaska School Activities Association still

exists as a legal entity within the Department of Education, its board of control is still responsible for making eligibility decisions in accordance with its bylaws, and the state board still acts as an appeal body under those bylaws Jan 8, 1988 (Op. Atty Gen.)

Sec. 14.07.059. Alaska school activities fund. (a) The Alaska school activities fund is established in the general fund under the administration of the department.

(b) The commissioner shall review the budget request of the Alaska School Activities Association and request a sum the commissioner approves that is equitable to all regions of the state.

(c) School districts and member schools of the Alaska School Activities Association may appropriate money to the fund.

(d) The department shall deposit in the Alaska school activities fund all fees, including membership fees and activity and events fees collected by the Alaska School Activities Association. (§ 1 ch 128 SLA 1976; am § 17, 18 ch 138 SLA 1986; am § 4 ch 90 SLA 1991)

Revisor's notes. — Formerly AS 14.07.054 Renumbered in 1982

Effect of amendments. — The 1991

amendment, effective July 3, 1991, in subsection (d), deleted the former second and third sentences

Sec. 14.07.060. Regulations. The board shall adopt regulations that are necessary to carry out the provisions of this title. All regulations shall be adopted under AS 44.62 (Administrative Procedure Act). (§ 1 ch 98 SLA 1966; am § 8 ch 96 SLA 1967)

NOTES TO DECISIONS

Quoted in State v. Northern Bus Co., 603 P.2d 319 (Alaska 1984)

Noted in Tunley v. Municipality of Anchorage, 631 P.2d 67 (Alaska 1982)

Cited in State v. Ilioring Rural Regional Educ. Attendance Area Sch. Dist., 634 P.2d 744 (Alaska 1983)

Sec. 14.07.070. Withholding state funds. State funds may not be paid to a school district or teacher that fails to comply with the school laws of the state or with the regulations adopted by the department. (§ 1 ch 98 SLA 1966)

Article 2. State Board of Education.

Section

- 75 Creation
- 85 Appointment of members
- 86 Term of office
- 105 Quorum and chair
- 115 Removal
- 125 Meetings
- 135 Legal assistance
- 145 Commissioner of education

Section

- 150 Budget and fiscal authority
- 155 Partisan candidacy prohibited
- 160 Bylaws
- 165 Duties
- 170 Additional powers and duties of board
- 181 Pamphlet concerning controlled substances

Collateral references. — 69 Am Jur 2d Schools, § 8-7, 37-45
79 C.J.S. Schools and School Districts, § 13-91

Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning. 33 ALR2d 703

Sec. 14.07.075. Creation. There is created at the head of the Department of Education a Board of Education consisting of seven members. (§ 1 ch 96 SLA 1967)

NOTES TO DECISIONS

Noted in Hensch v. Alaska State Oper. and Pub. Sys., 636 P.2d 703 (Alaska 1982); Tunley v. Municipality of Anchorage, 631 P.2d 67 (Alaska 1982)

Sec. 14.07.080. Creation and term of office. (Repealed, § 14 ch 96 1967)

Sec. 14.07.085. Appointment of members. (a) The seven members of the board, no more than four of whom shall be members of the same political party as the governor, shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. In appointing board members, the governor shall consider recommendations made by recognized educational associations in the state.

(b) One member shall be appointed from each of the four judicial districts and three from the state at large with at least one member representing regional educational attendance areas

(c) The members are entitled to the expenses, travel, and per diem allowances provided by law.

(d) A member may act and receive compensation from the date of appointment until confirmation or rejection by the legislature. (§ 1 ch 96 SLA 1967)

Reviser's notes. — The reference in AS 14.07.095(b) to "state operated rural schools" was changed to "regional educational attendance areas" in 1978 to conform to ch. 124, SLA 1978.

Cross references. — For further qualifications of members of Board of Education, see AS 39.05.065.

Sec. 14.07.090. Appointment of members. [Repealed, § 14 ch 96 SLA 1967.]

Sec. 14.07.095. Term of office. The members of the board shall be appointed for overlapping five-year terms commencing February 1 of the year of appointment. A member appointed to fill a vacancy serves for the unexpired term of the member whose vacancy is filled. A vacancy occurring during a term of office is filled in the same manner as the original appointment. (§ 1 ch 96 SLA 1967)

Sec. 14.07.100. Executive officer. [Repealed, § 14 ch 96 SLA 1967.]

Sec. 14.07.105. Quorum and chair. (a) Four members constitute a quorum.

(b) The board shall designate one member of the board as the chairperson who serves as chair of the board at the pleasure of the board. (§ 1 ch 96 SLA 1967)

Sec. 14.07.110. Appointment of commissioner. [Repealed, § 14 ch 96 SLA 1967.]

Sec. 14.07.115. Removal. Members of the board serve at the pleasure of the governor. (§ 1 ch 96 SLA 1967)

Sec. 14.07.120. Term of office and vacancy. [Repealed, § 14 ch 96 SLA 1967.]

Sec. 14.07.125. Meetings. The board shall meet at least quarterly. Meetings may be called by the chair or by a majority of the members of the board. Meetings shall be held in Juneau unless a majority of the members of the board changes the place of a meeting. (§ 1 ch 96 SLA 1967)

Sec. 14.07.130. Removal of commissioner. [Repealed, § 14 ch 96 SLA 1967.]

Sec. 14.07.135. Legal assistance. The Department of Law shall provide all legal services for the board. (§ 1 ch 96 SLA 1967)

Sec. 14.07.140. Commissioner administers department. [Repealed, § 14 ch 96 SLA 1967.]

Sec. 14.07.145. Commissioner of education. (a) The board shall appoint the commissioner of education subject to the approval of the governor. The commissioner shall be the principal executive officer of the department. *and serves at the pleasure of the gov.*

(b) The commissioner shall be appointed without regard to political affiliation and shall have at least a master's degree with five years' experience in the field of education since receiving it, with at least three of the five years in an exclusively administrative position.

(c) The commissioner may be appointed by the board for a term of office not to exceed five years. The commissioner may be removed during a term of office by four members of the board for cause as defined in this section.

(d) The commissioner shall receive the salary set out in AS 39.20.080.

(e) The commissioner shall employ and remove all classified personnel in the department subject to AS 39.25 (State Personnel Act). The commissioner may employ and remove personnel in the exempt or partially exempt service subject to the approval of the board. Personnel in the exempt or partially exempt service have a right of appeal to the board if they are removed.

(f) In this section, "cause" means

- (1) incompetency, which is the inability or the unintentional or intentional failure to perform the duties of the commissioner;
- (2) immorality, which is the commission of an act that, under the laws of the state, constitutes a crime involving moral turpitude; or
- (3) malfeasance or misfeasance in office which includes, but is not limited to, the failure of the commissioner to comply with the rules or regulations adopted by the board. (§ 1 ch 96 SLA 1967)

Reviser's notes. — In 1967, subsections (d) and (e), respectively, to conform to the organization of the Alaska Statutes were renumbered as (f), (d).

Sec. 14.07.150. Budget and fiscal authority. The commissioner has responsibility and authority for the preparation and execution of a budget and for the other fiscal affairs of the department, subject to the approval of the board. (§ 1 ch 96 SLA 1966; am § 2 ch 96 SLA 1967)

Sec. 14.07.155. Partisan candidacy prohibited. A member of the board may not be a candidate for partisan political office while serving as a member of the board. (§ 3 ch 96 SLA 1967)

Sec. 14.07.160. Bylaws. (a) The board may adopt bylaws for the management of the department.

(b) The bylaws shall be written and distributed in a manner so as to be readily available to personnel of the department.

(c) This section may not be construed to allow the use of a bylaw rather than a regulation where the subject is of statewide importance or interest. (§ 1 ch 98 SLA 1966; am § 4 ch 96 SLA 1967; am § 7 ch 46 SLA 1970; am § 3 ch 205 SLA 1970)

Sec. 14.07.165. Duties. The board shall adopt

(1) statewide goals and require each governing body to adopt written goals that are consistent with local needs;

(2) regulations regarding the application for and award of grants under AS 14.03.125. (§ 5 ch 173 SLA 1990)

Sec. 14.07.170. Additional powers and duties of board. (a) The board may

(1) appoint unpaid advisory commissions;

(2) require school boards or school personnel to submit to the department, in the form the board may require, the district budget or any information or reports that are reasonably necessary to assist the department in carrying out its functions.

(b) The board shall review grant applications recommended under AS 14.11.013 and may approve grant applications under AS 14.11.015. (§ 1 ch 98 SLA 1966; am § 5 ch 96 SLA 1967; am § 3 ch 5 SLA 1990)

Effect of amendments. — The 1990 amendment, effective March 1, 1990, added subsection (b).

Secs. 14.07.180 — 14.07.190. [Renumbered as AS 14.11.010 — 14.11.020.]

Sec. 14.07.181. Pamphlet concerning controlled substances. The board shall direct the department to develop, adopt, periodically review, and distribute annually to each student enrolled in a public school an information pamphlet. The pamphlet must be written in easily understandable language, must be designed to educate the student about controlled substances, and must summarize information relating to the criminal penalties applicable to the possession and sale of controlled substances in public schools, in areas adjacent to schools, and on school buses. (§ 6 ch 63 SLA 1991)

Chapter 08. Education in the Unorganized Borough.

Section	Section
11. Purpose	81. Recall
21. Authority	91. Organization, oath and bond
31. Regional educational attendance areas	101. Powers
41. Regional school boards	111. Duties
45. Vacancies	115. Advisory school boards in regional educational attendance areas
51. School board sections	131. Disqualification from voting for conflict of interest
61. Term of office	151. Land and buildings
71. Elections	

Cross references. — For provisions governing employees of regional educational attendance areas, see AS 23.40.200

NOTES TO DECISIONS

The Public Employment Relations Act, AS 23.40.070 — 23.40.280, does not apply to the noncertificated employees of the regional educational attendance areas. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub Serv Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Since it excludes such employees of school districts from coverage, the Public Employment Relations Act, AS 23.40.070 — 23.40.280, excludes noncertificated employees of school districts from its coverage. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub Serv Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

And regional educational attendance areas appear to be school districts within the meaning of AS 23.40.280(6), defining "public employees" for the purposes of the Public Employment Relations Act. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub Serv Employees, Local 71, 591 P.2d 1292 (Alaska 1979).

Although this title does not specifically provide that regional educational attendance areas are to be considered "school districts," implicit in the statute is the notion that they are in fact school districts.

Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub Serv Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Thus, no statute imposes duty to bargain on such areas. — Because the Public Employment Relations Act, AS 23.40.070 — 23.40.280, does not apply to noncertificated employees of school districts, there is no statute which imposes a duty to bargain on the regional educational attendance areas and the regional educational attendance areas therefore have no statutory duty to bargain with a bargaining representative of the noncertificated employees. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub Serv Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Collective bargaining agreement with predecessor did not bind areas. — Collective bargaining agreement entered into between the state and a public service council, which agreement included within the bargaining unit the noncertificated employees of the regional educational attendance areas' predecessor, the Alaska State Operated School System, which was disbanded pursuant to the same act creating the regional educational attendance areas, did not bind the regional educational attendance areas.

Who is the head of the department of Education?

Is the commissioner to act as the head of the department or the principal executive officer of the board?

Governor Knowles' transmittal letter refers to heads of principal departments, and reasons that the commissioner of education should be appointed and removed like all other commissioners, but does statute set up the Department of Education like other departments?

State statute refers to the Board of Education as the head of the department, so does the commissioner play a role more like an executive director of a board?

Will you be submitting the Commissioner of Education for confirmation like other commissioners?

Will the Commissioner of Education be paid at a rate equal to other commissioners?

Will Commissioner of Education be a member of the Governor's cabinet like other commissioners?

Do I have your assurance that you will be submitting the Commissioner of Education for confirmation?

And the Board of the Education has already been submitted for confirmation.

So does the Board advise the Commissioner, or does the Commissioner carry out the wishes of the board?

What happens if there is not harmony between the board and the Commissioner?

Section 23. Reorganization. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

NOTES TO DECISIONS

Judicial definition of functions of state departments. — The constitution vests no power in the judiciary to define the specific functions of the principal departments in the state government or the units of the executive branch, and in the absence of express authorization or an overriding constitutional imperative, the judiciary may not inquest such a power to itself. *Granata v. Orchipintl*, 602 P.2d 442 (Alaska 1979).

Superior court cannot order home study by department of health and social services. — The superior court does not have the authority to order the Alaska department of health and social services division of social services, against its will, to conduct a home study in a private cus-

tody dispute. *Granata v. Orchipintl*, 602 P.2d 442 (Alaska 1979).

The legislative veto power granted in this section and Alaska Const., art. X, § 12, is the power to change statutes, not rule-making power, which is the power to interpret and implement statutes. *State v. ALIVE, Voluntary*, 608 P.2d 769 (Alaska 1980).

The creation of the Alaska Mortgage Adjustment Agency was not a change in the organization of the executive branch of government requiring the force of law. *Suler v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

Cited in Alaad v. Goruch, 703 P.2d 1158 (Alaska 1985).

Section 24. Supervision. Each principal department shall be under the supervision of the governor.

NOTES TO DECISIONS

Applied in *State v. Fairbanks N. Star Borough*, 736 P.2d 1140 (Alaska 1987).

Cited in *Aspen Exploration Corp. v. Sheffield*, 739 P.2d 150 (Alaska 1987).

Section 25. Department Heads. The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state. The heads of all principal departments shall be citizens of the United States.

Revisor's notes. — Senate Joint Resolution No. 2, "changing the name of the secretary of state to lieutenant governor" in 16 sections of the Alaska Constitution effective October 10, 1970, inadvertently

omitted express amendment of this section.

Opinions of attorney general. — Not the custom nor law requires the governor to submit the names of the heads of principal

pal departments to the legislature for confirmation when they carry over in office

following a gubernatorial election, January 25, 1970 (Op. Atty. Gen.)

NOTES TO DECISIONS

Clear nature of provisions. — The provisions of this section and § 26 of this article are clear and unambiguous. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

Purpose of section. — This section explicitly empowers the governor to appoint and dismiss the head of each principal department. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

This section subjects executive appointments to confirmation by a majority of the members of the legislature in joint session. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

Confirmation is part of executive power of appointment. — Confirmation is not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by constitution to the legislative branch of government. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

Limitation on legislative checks on governor's power to appoint. — The lack of ambiguity in this section and § 26 of this article mandate that this court interpret these express provisions as embodying not only the maximum parameters of the delegation of the executive appointive authority through the legislative confirmation function but, further, that

they delineate the full extent of the constitution's express grant to the legislative branch of checks on the governor's power to appoint subordinate executive officers. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

This section and § 26 of this article mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

The quorum for a joint session of the legislature convened under Article III, §§ 25 and 26 of the Alaska Constitution is a majority of the members of the legislature, or 31 legislators from either house of the legislature. *Alaad v. Goruch*, 703 P.2d 1158 (Alaska 1985).

Section 1, ch. 82, S.L.A. 1975, is unconstitutional. — Section 1, ch. 82, S.L.A. 1975, which amends AS 39.05.020 and purports to authorize legislative "mediating" in the exercise of an executive power, i.e., the appointment of executive officials, is unconstitutional because it is violative of separation of powers requirements. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

Applied in *Larson v. State*, 564 P.2d 365 (Alaska 1977); *Huckalew v. Holloway*, 106 P.2d 240 (Alaska 1979); *Kerttula v. Alaad*, 696 P.2d 1197 (Alaska 1980).

Section 26. Boards and Commissions. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

NOTES TO DECISIONS

Clear nature of provisions. — The provisions of this section and § 25 of this article are clear and unambiguous. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

Vesting of powers of appointment

and confirmation. — This section vests the power of appointment in the governor and the power to confirm in the legislature in joint session. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

Removal is as provided by law. —