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FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 4, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/7/98

The FINANCE Committee considered:

SB 358 am

SENATE BILL NO. 358 am

PERSONNEL RECORD DISCLOSURE: USE OF FUNDS

"An Act relating to the disclosure of certain personnel records that include information about the use of public resources."

recommends it be replaced with the following committee substitute HCS SB 358 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) Senate Gov, 4/30/98

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Eldon Hull</u> Mulder	X			
<u>Gene Theriault</u> Theriault			X	
<u>Timothy Martin</u> Martin	X			
<u>Vic Kohring</u> Kohring	X			
<u>Jim Davies</u> J. Davies				X
<u>Bar. Grossendorf</u> Grossendorf			X	
<u>W. P. Moses</u> Moses			X	
<u>Greg L. Kelly</u> G. Davis	X			
<u>Greg L. Kelly</u> Kelly				✓

CHAIR'S SIGNATURE Eldon Hull
mulder

FISCAL NOTE

No. 1
 Bill Version: SB35B
 (S) Publish Date: 4/30/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____ Dept. Affected All departments
 Title An Act relating to disclosure of the use of BRU _____
state funds related to personnel records. Component _____
 Sponsor Senate Finance Committee _____
 Requester Senate Finance Committee Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would not have a significant fiscal impact on any state agency.

Prepared by Jack Kreinheder *Jack Kreinheder* Phone 465-4676
 Division Office of Management and Budget Date 4/30/98
 Approved by Commissioner Jim Ayers, Chief of Staff *J. Ayers* Date _____
 Agency Office of the Governor

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SPONSOR STATEMENT

SB 358: An Act Relating to Disclosure of the Use of State Funds Related to Personnel Records

The amendment to the statute governing confidentiality of personnel records will continue to preserve privacy over state employee personnel and disciplinary matters, but will permit the disclosure of instances where misuse or abuse of state funds by a state employee caused a disciplinary action.

The Department of Law narrowly interprets AS 39.25.080 as currently written to prohibit the disclosure of the nature or purpose of expenditures determined inappropriate that is cause for a disciplinary action against the employee. Senate Bill 358 will still protect the private nature of discipline administered, but allows the disclosure of the cause of the disciplinary action taken. It will also allow for the disclosure of any internal investigative actions taken to review alleged abuse of state funds that are construed as a disciplinary matter.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department of Education (DOE), Division of Vocational Rehabilitation should coordinate with the Department of Administration to establish an equitable application of medical insurance benefits to all disabled employees or prospective employees of the State of Alaska.

The current state medical plan offered to employees of the State of Alaska contains a pre-existing medical condition limitation clause. This clause defines pre-existing condition as:

...conditions, excluding pregnancy, for which you received diagnosis, tests or treatment (including taking medication) during the three consecutive months before the most recent day you became covered under this plan.

Only the first \$1,000 of covered medical expenses are paid by the medical plan for pre-existing conditions. Once an employee has been covered for 12 consecutive months, the limitation is cancelled.

The director of the Division of Vocational Rehabilitation (DVR) has a significant disability.¹ Under the limitation clause within the medical plan, the director's disability is considered a pre-existing condition. Accordingly, any medical related expenses beyond the \$1,000 allowance for the first 12 months of employment would not be a covered expense under the plan. Apparently DOE believed the pre-existing condition limitation clause, combined with the high cost of obtaining medical insurance by the director was a barrier to his employment with the State.

With the approval of the commissioner of Administration, DOE reimbursed the director of DVR \$3,267 for medical insurance premium costs incurred by the director for insurance coverage during the 12-month "waiting period" required by the State's medical plan. After that 12-month period, the director qualified for full coverage. While we commend the department for its action in this regard, we also find the potential for disparate treatment of employees or prospective employees in the same situation. If it was financially difficult for the director, to personally obtain medical insurance during the "waiting period," with a beginning state salary of approximately \$71,000 annually, other employees or prospective employees in the same situation, at a much lower salary would find it even more difficult to personally obtain medical insurance so an offer of state employment could be accepted.

The merits of the actions taken by the administration aside, we do have concerns over its implications. Based upon our review which included discussions with the Department of Administration Labor Relations staff as well as the health plan administrators in the Division of Retirement and Benefits, we have found no other instances of this type of accommodation.

¹ Governor's press release #95-153 dated June 29, 1995.

There are no allowances in the budget, personnel rules, statute, policies and procedures, or employee benefit packages that permit the state employer to procure additional employee medical insurance coverage beyond that offered to all employees. This, in effect, resulted in an unauthorized pay increase for the director. Again, we find this benefit not expressly required by the federal American's with Disabilities Act (ADA), and its inconsistent application could potentially result in disparate treatment of state employees.

Recommendation No. 2

The Department of Education should (a) adopt new travel policies clearly establishing which travel related expenditures are reimbursable and (b) improve the pre-audit function of travel expense reimbursement claims.

As discussed in the Report Conclusions section, while we cannot comment on the specifics contained in the DOE internal report it is clear to us that DOE policies and procedures governing the review and approval of travel reimbursement claims were lacking as evidenced by the reimbursement to the State of previously paid expenses.

Travel policies are established to provide reimbursement for *actual* and *necessary* expenses incurred by employees while traveling on state business. The policies apply uniformly to all employees. All expenses claimed must be reviewed and subject to approval.

While there may have been some question as to the eligibility of certain expenses qualifying for reimbursement, it is apparent the review of those claims, which the director asserts he relied upon in determining their eligibility, was for whatever reasons not adequately performed.

We recommend that DOE clearly establish and disseminate to staff what are and are not eligible expenditures subject to reimbursement and also reinforce amongst staff the importance of reviewing, and questioning, expenditures submitted for reimbursement.

Recommendation No. 3

The Department of Education should establish travel policies that specifically address the issue of third party payment for travel related expenditures incurred by employees that require other parties to accompany the employee to provide personal assistance.

Because of the accommodations required by the director DOE reimburses the cost of personal care assistants (PCA) for work related assistance provided to the director. When the director travels, a PCA usually accompanies the director to provide personal care.

Occasionally the director travels to conferences or meetings, often out of state, at the expense of third parties, oftentimes the host of the particular event. However, generally the

Based upon our review, contrary to the statute cited above there is no evidence of additional services provided to DVR which warranted the amended RSA. Additionally, ESS cannot demonstrate the actual cost of the service envisioned to be provided nor is there an OMB approved cost allocation method for these funds.

The FY 97 ADA component within DVR had an authorized spending level of approximately \$135,000 and an actual expenditure balance of approximately \$99,000. The majority of those expenditures funded the amended RSA, in which \$65,700 was transferred via that RSA to ESS. The remaining approximately \$33,000 was expended within the DVR ADA component itself, mainly for personal services, travel, and contractual.

We recognize that the funds appropriated to DVR for ADA coordinator activity for the most part remained unspent because the two positions that were funded were not filled in a timely manner. However, we also recognize that there were ADA related activities undertaken by DVR.

It has been asserted that because the ADA coordinator positions within DVR remained vacant, that ESS performed ADA related duties on behalf of DVR. However, as stated above, ESS is unable to specifically identify the ADA (or other) activities it performed and at what cost. If the legislature had wanted ESS to fulfill the functions funded by the amended RSA, the legislature would have appropriated the funds to ESS rather than to DVR.

In the future, DOE should establish intra-agency RSAs only based upon (a) the authority for the servicing agency to provide the service, (b) a clearly defined scope of work, and (c) a clearly identified estimated cost of the servicing agency to provide the service to the requesting (and paying) agency. By doing so, DOE would be in compliance with AS 37.07.080(e), which governs provision of services via RSAs.

Audit says state funds misused

By MARK SABBATINI

THE JOURNAL NEWS

A top state education official improperly used travel funds and received extra money to cover his health insurance, according to a legislative audit released today.

The report comes after an arbitrator's ruling earlier this year that said the same official fired his top assistant in a political vendetta and used the money for raises and to refurbish his office.

Lawmakers, in response to the audit, quickly sent a bill to the Senate floor making public the purposes for which state employees use travel funds. Specifics were excluded from the audit, but at least some of the expenses are related to the employee's status as a quadriplegic.

Duane French, director of the Division of Vocational Rehabilitation, improperly claimed unnecessary expenses during state travel and sought reimbursement for a personal friend acting as a caretaker on unofficial trips, officials said.

The state Department of Education also gave French nearly \$3,300 to pay for health insurance during his first year as director — although other employees receive no such compensation, according to the audit. The department also cannot give an adequate explanation of why \$85,700 intended to hire employees in French's division was used instead for administrative purposes, auditors said.

French was required to reimburse nearly \$1,400 to the Department of Education after the audit was done of his travel expenses. Legislative Auditor Pat Davidson said the reimbursement is sufficient, but "the personnel action taken (against French by the department) was minimally acceptable" and the circumstances should be made public.

"In this situation, the benefits of public disclosure may outweigh the public policy rationale which provides for confidentiality of personnel actions," she wrote in her report.

French, in an interview today, said he was not comfortable having the circumstances of the trips known, since they were personnel matters. Still, he maintained nothing inappropriate occurred.

"In one instance it was regarding (a handicapped) accessible van and I felt I needed it, and they and I disagreed on that," he said. "I responded and lived up to my responsibility."

The state allows reimbursement for personal-care assistants during conferences and other trips not taken at state expense. French said his normal assistant was not available for the travel in question.

"Unfortunately there are times when assistants are supposed to work and they get sick and can't, and in that case I took whoever was available," he said. "It took them away from work. They provided whatever assistance was needed so it was appropriate."

Department of Education Commissioner Shiris Holloway, in a written response to the audit, said French was offered extra insurance compensation because he is in a unique situation.

Meet Jac



"Reflections"
21" tall x 17" long
\$6275

Am 1

Adopted ~~5/2 Rescind~~
HFC 5/7/98

0-LS1778A.6
Cramer
5/2/98

(P)

AMENDMENT

#2
Sen Pearce

OFFERED IN THE SENATE

TO: SB 358

1 Page 1, lines 1 - 2:

2 Delete "disclosure of the use of state funds related to personnel records"

3 Insert "the disclosure of certain personnel records that include information about
4 the use of public funds"

5 Page 1, lines 4 - 10:

6 Delete all material and insert:

7 ** Section 1. AS 39.25 is amended by adding a new section to read:

8 Sec. 39.25.085. Release of certain information in personnel records
9 concerning the use of public funds. (a) A state agency that is authorized by law
10 to audit the state's use of public funds may request the public release to the agency
11 of audit results contained in a confidential personnel record that relate to the improper
12 use of public funds. The agency holding the records shall release the audit results
13 relating to the improper use of public funds to the auditing agency unless disclosure
14 is prohibited under this section or other law that protects the records on a basis other
15 than that the records are personnel records.

16 (b) A state agency holding confidential personnel records that are the subject
17 of a request for public release under (a) of this section shall notify the employee who
18 is the subject of the record of the request for public release of audit results relating
19 to the improper use of public funds and of the procedures that the employee may use
20 to protest the public release of the audit results. The employee may, within 10 days
21 after receiving notice of the request to release the audit results, file with the
22 appropriate reviewing officer a written objection to the public release. The
23 appropriate reviewing officer or the officer's designee shall hold an informal
24 confidential hearing and review the record to determine if the findings and

#2

0-LS1778A.6

1 conclusions relating to the improper use of public funds are based on substantial
2 evidence and if the decision in the matter is reasonable. If the reviewing officer finds
3 that the audit results are not based on substantial evidence or that the decision is
4 unreasonable, the officer shall prohibit the public release of the audit results.

5 (c) The appropriate reviewing officer for employees of the executive branch,
6 including employees of the University of Alaska, is the officer appointed by the
7 director of the division of finance, Department of Administration, or the officer's
8 designee. The appropriate reviewing officer for employees of the judicial branch is
9 the administrative director of the court system. The appropriate reviewing officer for
10 employees of the legislative branch is the

11 (1) director of the Legislative Affairs Agency for employees of the
12 agency;

13 (2) legislative auditor for employees of the division of legislative audit;

14 (3) legislative fiscal analyst for employees of the division of legislative
15 finance;

16 (4) ombudsman for employees of the Office of the Ombudsman.

17 (d) This section does not apply to the personnel records of legislators or to
18 the records of employees of the legislative branch who are not specifically included
19 in (c) of this section.

20 (e) Notwithstanding AS 39.25 110, this section applies to personnel records
21 of employees in the classified, partially exempt, and exempt services except as
22 provided in (d) of this section.

23 (f) In this section, "division of finance" means that unit of the Department of
24 Administration that is responsible for the financial records of the state."