

HB

94

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 8, 1999

FURTHER REFERRALS:

Date of Committee Action: 3/15/99

The FINANCE Committee considered:

HB 94

HOUSE BILL NO. 94

ABC BD EMPLOYEES NOT EXEMPT EMPLOYEES

"An Act removing employees of the Alcoholic Beverage Control Board from the exempt service."

recommends it be replaced with the following committee substitute _____ [] 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) DOR 3/8/99

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Gene Theriault</i> Theriault			X	
<i>Don Bunde</i> Bunde			✓	
<i>Vic Kohring</i> Kohring	X			
<i>Alan Austerman</i> Austerman			X	
<i>John Davis</i> J. DAVIS	X			
<i>Grussendorf</i> Grussendorf	X			
<i>Moses</i> Moses	X			
<i>G. Davis</i> G. DAVIS	X			
<i>W.K. Williams</i> Williams	X			
<i>Foster</i> Foster	X			
<i>[Signature]</i>				

Co- CHAIR'S SIGNATURE *Gene Theriault*
Theriault

FISCAL NOTE

Bill Version: HB 94
 (H) Publish Date: 3/8/99

**STATE OF ALASKA
 1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Revenue
 Title Removing employee of the Alcoholic Beverage BRU ABC Board
Control Board from exempt service Component ABC Board
 Sponsor Rep. Kott
 Requester House Labor & Commerce Committee Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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 current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact on the ABC Board

Prepared by Doug Griffin, Director
 Division ABC Board
 Approved by Wilson L. Condon
 Commissioner
 Agency Department of Revenue

Phone 465-2301
 Date/Time February 25, 1999, 3:16 PM
 Date 2/26/99

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Miscellaneous						
TOTAL OPERATING	-0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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Alaska State Legislature

House of Representatives

COMMITTEES
JUDICIARY COMMITTEE, CHAIR
RULES
MILITARY & VETERANS AFFAIRS
UTILITY RESTRUCTURING
ETHICS



INTERIM:
10928 EAGLE RIVER RD., SUITE 141
EAGLE RIVER, AK 99577

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801

Sponsor Statement

HB 94

An Act removing employees of the Alcoholic Beverage Control Board from the exempt service.

This bill is a house keeping measure. The Alcohol Beverage Control employees are now all in the classified service and the statute AS39.25.110(15) is now superfluous and should be repealed.

At one time the Alcohol Beverage Control (ABC) employees were exempt and were appointed to their positions. Presently all ABC employees are in the classified service. The present statute lists ABC employees as in the exempt service. This statute is no longer applicable to the current situation.

My interest in this matter is based on Mr. Charbonneau's letter to me explaining the situation. Mr. Charbonneau is a constituent and resides in my district. I am responding to a constituent's request as his representative to the Alaska Legislature.

It is my understanding that the administration does not oppose this bill.

I urge your support for this legislation.



Representative Pete Kott

JUNEAU OFFICE (907) 465-3777 TOLL FREE 1-800-861-KOTT(5688) FAX (907) 465-2819
EAGLE RIVER OFFICE (907) 694-8944 FAX (907) 694-8945 E-MAIL: representative_pete_kott@legis.state.ak.us



FISCAL NOTE

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. HB 94

Revision Date/Time (Note if correction) _____ Dept. Affected Revenue
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CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

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ANALYSIS: (Attach a separate page if necessary)

No fiscal impact on the ABC Board

Prepared by Doug Griffin, Director
 Division ABC Board
 Approved by Wilson L. Condon
 Commissioner
 Agency Department of Revenue

Phone 465-2301

Date/Time February 25, 1999, 3:16 PM

Date 2/26/99

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PROPOSED STATUTE CHANGE
AS 39.25.110(15) EXEMPT SERVICE

Representative Pete Kott:
State Capitol, Room 204
Juneau, Ak. 99801-1182

Dear Representative Kott,

It has come to our attention that a contradiction exists between state statute and union representation involving employees of the Alcoholic Beverage Control Board.

The Statute AS 39.25.110(15) Exempt service, shows "officers, agents and employees of the Alcoholic Beverage Control Board granted limited peace officer powers by the Alcoholic Beverage Control Board under AS 04.06.110" are exempt employees.

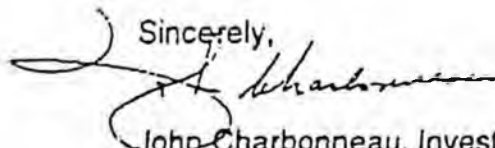
All employees of the Alcoholic Beverage Control Board are represented by a union, pay union dues, and have been so since unions started representing employees of the State of Alaska. At no time, have employees of the A.B.C. Board been treated as exempt employees, nor have they desired to be treated as exempt.

We are requesting AS39.25.110(15) be amended by the deletion of section(15).

The other investigators of this agency have been contacted regarding this matter and are in concurrence with this request.

Thank you for your consideration regarding this matter. If there is any thing further you need please do not hesitate to call me.

Sincerely,



John Charbonneau, Investigator
State of Alaska
Alcoholic Beverage Control
550 W. 7th. Ave. Suite 350
Anchorage, Ak. 99501

Sec. 39.25.100. Classified service.

The classified service consists of all positions in the state service not included in the exempt service or in the partially exempt service.

History -

(Sec. 4 ch 144 SLA 1960)

Decisions -

Quoted in *Mueller v. Alaska State Bd. of Personnel*, 425 P.2d 145 (Alaska 1967); *State v. Bogenrife*, 513 P.2d 13 (Alaska 1973).

Sec. 39.25.110. Exempt service.

Unless otherwise provided by law, the following positions in the state service constitute the exempt service and are exempt from the provisions of this chapter and the rules adopted under it:

- (1) persons elected to public office by popular vote or appointed to fill vacancies in elected offices;
- (2) justices, judges, magistrates, and employees of the judicial branch including employees of the judicial council;
- (3) employees of the state legislature and its agencies;
- (4) the head of each principal department in the executive branch;
- (5) officers and employees of the University of Alaska;
- (6) certificated teachers and noncertificated employees employed by a regional educational attendance area established and organized under AS 14.08.031 - 14.08.041 to teach in, administer, or operate schools under the control of a regional educational attendance area school board;
- (7) certificated teachers employed by the Department of Education as correspondence teachers, teachers in skill centers operated by the Department of Education, or in Mt. Edgecumbe School;
- (8) patients and inmates employed in state institutions;
- (9) persons employed in a professional capacity to make a temporary or special inquiry, study or examination as authorized by the governor;
- (10) members of boards, commissions, or authorities;
- (11) the officers and employees of the following boards, commissions, and authorities:
 - (A) [Repealed, Sec. 13 ch 43 SLA 1994].
 - (B) Alaska Permanent Fund Corporation;
 - (C) Alaska Industrial Development and Export Authority;
 - (D) Alaska Commercial Fisheries Entry Commission;
 - (E) Alaska Commission on Postsecondary Education;
 - (F) Alaska Aerospace Development Corporation;
- (12) the executive secretary and legal counsel of the Alaska Municipal Bond Bank Authority;
- (13) the state medical examiner, deputy medical examiner, and assistant medical examiners appointed under AS 12.65.015 and physicians licensed to practice in this state and employed by the division of mental health and developmental disabilities in the Department of Health and Social Services or by the Department of Corrections;
- (14) petroleum engineers and petroleum geologists employed in a professional capacity by the Department of Natural Resources and by the Oil and Gas Conservation Commission, except for those employed in the division of geological and geophysical

surveys in the Department of Natural Resources;

(15) officers, agents, and employees of the Alcoholic Beverage Control Board granted limited peace officer powers by the Alcoholic Beverage Control Board under AS 04.06.110;

(16) persons employed by the division of marine transportation as masters and members of the crews of vessels who operate the state ferry system and who are covered by a collective bargaining agreement provided in AS 23.40.040;

(17) officers and employees of the state who reside in foreign countries;

(18) employees of the Alaska Seafood Marketing Institute;

(19) emergency fire-fighting personnel employed by the Department of Natural Resources for a fire emergency or for fire prevention and related activities conducted under AS 41.15.030;

(20) employees of the Office of the Governor and the office of the lieutenant governor, including the staff of the governor's mansion;

(21) employees of the Citizens' Advisory Commission on Federal Areas in Alaska established under AS 41.37.010;

(22) youth employed by the Department of Natural Resources under the Youth Employment and Student Intern programs;

(23) the executive director of the Medicaid Rate Advisory Commission;

(24) students employed by the state institutions in which the students are enrolled;

(25) the executive director and staff of the Alaska Science and Technology Foundation established under AS 37.17.010;

(26) investment officers in the Department of Revenue;

(27) the executive director and other staff of the Alaska Tourism Marketing Council;

(28) persons engaged in employment or pre-employment training programs operated by the Department of Military and Veterans' Affairs;

(29) [Repealed, Sec. 9 ch 115 SLA 1989].

(30) a person employed as an actuary or assistant actuary by the division of insurance in the Department of Commerce and Economic Development;

(31) the chief administrative law judge and any other administrative law judges appointed to the office of tax appeals of the Department of Administration under AS 43.05.400 - 43.05.499;

(32) a participant in the Alaska temporary assistance program under AS 47.27 who holds a temporary position with the state in order to obtain job training or experience;

(33) a person employed as a convener under AS 44.62.730 or as a facilitator under AS 44.62.760 related to a negotiated regulation making process under AS 44.62.710 - 44.62.800.

History -

(Sec. 5 ch 144 SLA 1960; am Sec. 1 ch 48 SLA 1961; am Sec. 1 ch 133 SLA 1961; am Sec. 3 ch 93 SLA 1962; am Sec. 3 ch 24 SLA 1966; am Sec. 31 ch 46 SLA 1970; am Sec. 65 ch 69 SLA 1970; am Sec. 13 ch 113 SLA 1970; am Sec. 3 ch 78 SLA 1971; am Sec. 18 ch 78 SLA 1974; am Sec. 42 ch 127 SLA 1974; am Sec. 2 ch 32 SLA 1975; am Sec. 2 ch 79 SLA 1975; am Sec. 37 ch 124 SLA 1975; am Sec. 1 ch 157 SLA 1976; am Sec. 3 ch 90 SLA 1978; am Sec. 7 ch 18 SLA 1980; am Sec. 43 ch 106 SLA 1980; am Sec. 10 ch 131 SLA 1980; am Sec. 4 ch 148 SLA 1980; am Sec. 4 ch 106 SLA 1981; am Sec. 2, 3 ch 37 SLA 1982; am Sec. 7 ch 112 SLA 1982; am Sec. 1 ch 11 SLA 1983; am Sec. 1 ch 103 SLA 1984; am Sec. 58 ch 21 SLA 1985; am Sec. 1

ch 50 SLA 1985; am Sec. 69 ch 14 SLA 1987; am Sec. 1 ch 61 SLA 1987; am Sec. 2 ch 37 SLA 1988; am Sec. 2 ch 78 SLA 1988; am Sec. 26 ch 141 SLA 1988; am E.O. No. 72 Sec. 2 (1989) am Sec. 11 ch 95 SLA 1989; am Sec. 7, 9 ch 115 SLA 1989; am Sec. 10 ch 88 SLA 1991; am Sec. 1 ch 17 SLA 1992; am Sec. 4 ch 47 SLA 1993; am Sec. 13 ch 43 SLA 1994; am Sec. 111 ch 62 SLA 1995; am Sec. 17 ch 103 SLA 1996; am Sec. 25 ch 107 SLA 1996; am Sec. 6 ch 108 SLA 1996; am Sec. 1 ch 121 SLA 1996; am Sec. 4, 7 ch 117 SLA 1998)

Postponed Repeal Effective Date -

of paragraph (33). - Under Sec. 7, ch. 117, SLA 1998, paragraph (33) is repealed July 1, 2003.

Revisors Notes -

Former paragraph (29) was enacted as (28). Renumbered in 1989. Paragraph (32) was enacted as (31); renumbered in 1996.

Amendment Notes -

The 1991 amendment, effective July 2, 1991, in paragraph (11), redesignated former subparagraphs (D) to (F) as subparagraphs (C) to (E) and added subparagraph (F).

The 1992 amendment, effective May 16, 1992, in paragraph (13), inserted "or by the Department of Corrections" and made a stylistic change.

The 1993 amendment, effective September 1, 1993, in paragraph (13), added "the state medical examiner appointed under AS 12.65.015 and" to the beginning.

The 1994 amendment, effective May 16, 1994, repealed subparagraph (11)(A), relating to the Alaska Gas Pipeline Financing Authority.

The 1995 amendment, effective July 1, 1995, added paragraph (30).

The first 1996 amendment, effective September 23, 1996, inserted ", deputy medical examiner, and assistant medical examiners" near the beginning of paragraph (13).

The second 1996 amendment, effective July 1, 1997, added paragraph (32).

The third 1996 amendment, effective July 1, 1996, added paragraph (31).

The fourth 1996 amendment, effective September 27, 1996, in paragraph (19), substituted "emergency fire-fighting personnel" for "fire fighters" and added "or for fire prevention and related activities conducted under AS 41.15.030" at the end.

The 1998 amendment, effective June 23, 1998, added paragraph (33).

Editors Notes -

Section 41.37.010, referred to in paragraph (21), is repealed June 30, 1998.

Decisions -

The thrust of the exemptions in this chapter, - the Public Employees Retirement System, former AS 39.35.680(5)(c), and the statutory leave provisions for state employees, AS 39.20.310, is to provide for those public employees who are not susceptible to ordinary recruiting and examining procedures. *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

No inconsistency between ferry crew exemption of this section and inclusion of such personnel with Public Employment Relations Act, AS 23.40.070 et seq. - See *Hafling v. Inlandboatmen's Union*, 585 P.2d 870 (Alaska 1978).

National Guard exempt from Personnel Act. - Because of the state's adoption of federal personnel rules and regulation regarding promotion and separation in the Alaska National Guard, it has "otherwise provided by law" that members of the National Guard are exempt from the Alaska Personnel Act. *State, Dep't of Military & Veterans Affairs v. Bowen*, 953 P.2d 888 (Alaska 1998).

Effect of being in exempt service. - The "exempt service" is a category of jobs which, for whatever reason, the Legislature wanted to exclude from the state personnel system. Not every

person in the exempt service is a confidential employee. The fact that plaintiff was in the exempt service did not mean that the Alaska Energy Center lacked the power to give him a three-year contract. *Zerbetz v. Alaska Energy Ctr.*, 708 P.2d 1270, 1276-1277 (Alaska 1985).

Cited in *State v. Haley*, 687 P.2d 305 (Alaska 1984); *McGrath v. University of Alaska*, 813 P.2d 1370 (Alaska 1991).