

SB

132

STATE OF ALASKA

FRANK H. MURKOWSKI,
GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

March 10, 2005

The Honorable Gene Therriault
Senate State Affairs Committee
Alaska State Legislature
State Capitol, Room 119
Juneau, Alaska 99801-1182

Re: SB 132 -- State Human Rights Commission

Dear Senator Therriault:

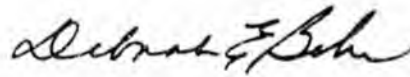
Attached please find a sectional analysis for SB 132, State Human Rights Commission.

If you have questions, please contact Assistant Attorney General Jan DeYoung at 260-5100, who prepared the sectional analysis.

Sincerely,

SCOTT J. NORDSTRAND
ACTING ATTORNEY GENERAL

By:



Deborah E. Behr
Assistant Attorney General

DEB:vpv

cc: Kevin Jardell, Legislative Director, Office of the Governor
David Márquez, Legislative Contact, Dept. of Law
Mike Tibbles, Legislative Contact, Dept. of Administration
Jan DeYoung, Assistant Attorney General, Anchorage

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March 8, 2005

Senator Gene Therriault, Chair
Senate State Affairs Committee
State Capitol, Room 119
Juneau, AK 99801-1182

Dear Senator Therriault:

The Office of the Governor respectfully requests that SB 132 (An Act relating to the Human Rights Commission) be scheduled for a hearing in the Senate State Affairs Committee at your earliest convenience.

For your review and consideration, I have attached the Governor's transmittal letter, a copy of SB 132, and two fiscal notes.

A representative from the Dept. of Law will be available to present the bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Jarrell".

KEVIN JARDELL
LEGISLATIVE DIRECTOR

STATE OF ALASKA

FRANK H. MURKOWSKI,
GOVERNOR

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March 7, 2005

The Honorable Gene Therriault, Chair
Senate State Affairs Committee
Alaska State Legislature
State Capitol, Room 119
Juneau, Alaska 99801-1182

Re: SB 132 - State Human Rights
Commission

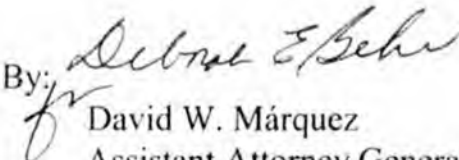
Dear Senator Therriault:

The Department of Law would appreciate scheduling of the above bill for a hearing in your committee, at your earliest convenience. The bill resides in your committee and is a high priority of the Administration.

If you have any questions, please feel free to contact me.

Sincerely,

SCOTT J. NORDSTRAND
ACTING ATTORNEY GENERAL

By: 
David W. Márquez
Assistant Attorney General

DWM:DEB:pvp

cc: Kevin Jardell, Legislative Director, Office of the Governor
Deborah Behr, Legislation and Regulations Attorney, Department of Law

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March 3, 2005

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would amend the investigation and procedure laws of the State Commission for Human Rights (commission). The bill would amend the investigation and hearing procedures to enhance fairness and efficiency and to give the commission more enforcement discretion to increase its effectiveness in combating unlawful discrimination.

The bill would add a new statutory provision, AS 18.80.112, to provide the staff of the commission with greater authority to evaluate complaints of discrimination and to choose the complaints that it pursues to hearing before the commission. The purpose of the amendment is to reverse the Alaska Supreme Court's decision in *Department of Fish and Game v. Meyer*, 906 P.2d 1365 (Alaska 1995), that a hearing is mandatory if a complaint is supported by substantial evidence. The court concluded that the state human rights laws did not give the commission staff discretion to discontinue action on a complaint after an investigator found substantial evidence of unlawful discrimination. *Id.*, at 1373. The effect of this decision was to require the commission to commit its resources to any complaint supported by substantial evidence without regard to such factors as the weakness of the evidence, the strength of an employer's affirmative defenses, or the significance of the alleged violation. Providing the commission with genuine prosecutorial discretion would allow the commission to commit its resources to complaints it determines merit pursuit, based on such factors as, for example, the strength of the evidence, the severity of the alleged violation, an employer's history before the commission, or the complaint's value in establishing precedent guiding future conduct.

The Honorable Ben Stevens
March 3, 2005
Page 2

The discretion of the staff of the commission would also be expanded to allow it to compromise a claim for damages in the conciliation (or prehearing) phase of the procedures. The bill would avoid conflicts between staff's exercise of its expanded discretion to compromise, dismiss, or pursue a complaint and the concerns of the victims of unlawful discrimination by allowing a complainant to opt out of commission procedures. A complainant may withdraw the complaint at any time before the executive director of the commission makes the decision to go to hearing and, after withdrawal, pursue the claim independently of the commission in another forum.

The bill would expand on a procedural change made in 2004 when the power to appoint the individuals who conduct commission hearings was moved from the commission to the chief administrative law judge in the Department of Administration. The bill would apply all of the statutes regarding hearings of the office of administrative hearings to the commission (including statutes addressing the qualifications of the persons who would conduct the commission's hearings) except for the statutes establishing hearing procedures. The commission's hearing procedures would be any specific procedures set out in AS 18.80 and the uniform procedures in the Administrative Procedure Act, AS 44.62.330 - 44.62.630. The bill would eliminate from AS 18.80 some duplicative procedural requirements that are addressed in the Administrative Procedure Act, such as the admissibility of evidence and the requirement that testimony be under oath. Another change would be the addition of a provision similar to a motion for summary judgment in the civil rules of court to allow a summary decision on the law if the facts are not disputed. The reason for allowing a summary decision is that it is a faster procedure than a hearing, and it would provide a sufficient opportunity to be heard on the legal issues when the facts are not in dispute. The bill would add a provision tying the rate of interest on commission economic awards to the rate of interest on judgments in AS 09.30.070, to conform the commission's rate to the rate awarded by other administrative agencies and the courts. It would continue to allow the commission to amend an accusation after a case is referred for hearing, but it would require that each new claim be supported by substantial evidence and that the commission provide a respondent with the opportunity to address new claims informally before being required to defend them in a formal hearing. The bill would move the statute of limitations for bringing a claim from regulation (6 AAC 30.230) to statute.

The bill would identify the specific relief available to remedy discrimination, to make the process more open and predictable and, thus, fairer. The bill would incorporate into statute the Alaska Supreme Court's conclusion that the commission lacks the authority to award punitive or

The Honorable Ben Stevens
March 3, 2005
Page 3

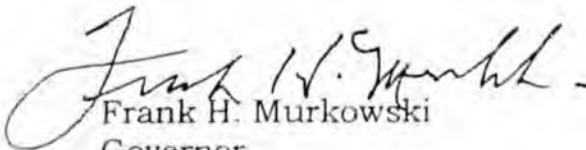
noneconomic damages. The bill would amend AS 18.30.130 to establish restoration of the benefit that was deprived -- hiring, promotion, or reinstatement to a position with back pay -- as the customary remedy for unlawful employment discrimination. The bill would define "pay" broadly to mean all compensation for service, including the cost of employee benefits. In the unusual case of an employee who is unable to return to work, the bill would allow an award of up to one year of future compensation. For any pay that the commission awards, the bill would require the commission to offset the amount an employee should have been able to earn after making a reasonable effort to find similar work.

Very importantly, under the bill the commission would retain the authority to order affirmative action to correct unlawful discrimination and to award "any appropriate relief" if it needs to innovate in order to remedy an unusual case of discrimination.

By increasing the commission's discretion in handling complaints, the bill would enable the commission to allocate its diminishing resources to cases in which the commission could be the most effective in addressing and eliminating unlawful discrimination. By streamlining commission procedures, the bill would help contain costs and ensure that the procedures are equitable to both complainants and the persons, businesses, labor organizations, and employment agencies charged before the commission with unlawful discrimination.

I urge your prompt and favorable action on this bill.

Sincerely yours,


Frank H. Murkowski
Governor

Enclosure