

**HB**

**4**

<TARGET><BILL>HB 4</BILL><SUBJECT>HB  
4</SUBJECT><COMM>HSTA27</COMM></TARGET>

27-LS0011\B  
Kirsch  
2/7/11

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 4( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVE LYNN**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the members of the state personnel board."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **\* Section 1. AS 39.25.060(a) is amended to read:**

4 (a) The personnel board is composed of five [THREE] members appointed by  
5 the governor and confirmed by the legislature meeting in joint session. The board  
6 shall be made up of two members selected from a list of four names to be  
7 submitted by the central committee of each political party whose candidate for  
8 governor received the highest number of votes or the second highest number of  
9 votes in the most recent preceding general election at which a governor was  
10 elected, and one member nominated by majority vote of the four committee  
11 members chosen from a list submitted by a political party. The term of office of a  
12 member is six years; however, notwithstanding AS 39.05.080(4), the member  
13 remains in office after expiration of the term until a successor is confirmed [. A  
14 VACANCY IN AN UNEXPIRED TERM SHALL BE FILLED BY APPOINTMENT  
15 BY THE GOVERNOR FOR THE REMAINDER OF THE TERM. THE

1 APPOINTMENT IS SUBJECT TO CONFIRMATION IN THE SAME MANNER  
2 AS A FULL-TERM APPOINTMENT].

3 \* **Sec. 2.** AS 39.25.060(b) is amended to read:

4 (b) Members of the board may not serve more than one term and may not  
5 be employees of the state. Not more than three [TWO] members of the board may be  
6 members of the same political party.

7 \* **Sec. 3.** AS 39.25.060 is amended by adding a new subsection to read:

8 (e) A vacancy because of the expiration of a term on the board shall be filled  
9 within 30 days after the occurrence of the vacancy under (g) or (h) of this section, as  
10 applicable.

11 (f) A vacancy in an unexpired term shall be filled by appointment by the  
12 governor for the remainder of the term under (g) or (h) of this section, as applicable.  
13 The appointment is subject to confirmation in the same manner as a full-term  
14 appointment.

15 (g) When replacing a member who was selected from a list submitted by a  
16 political party, the governor shall chose from a list of four names to be submitted by  
17 the central committee of the party

18 (1) whose candidate for governor received the highest number of votes  
19 or the second highest number of votes in the most recent preceding general election at  
20 which a governor was elected; and

21 (2) that has the fewest number of members on the board.

22 (h) When replacing a member who was not selected from a list submitted by a  
23 political party, the four members selected by the governor from a list submitted by a  
24 political party shall, by a majority vote, nominate to the governor an individual to  
25 serve as the fifth member of the board. The governor shall either appoint the nominee  
26 to the board or reject the nominee and request those four members to nominate another  
27 individual to serve as the fifth member of the board.

28 \* **Sec. 4.** AS 39.25 is amended by adding a new section to read:

29 **Sec. 39.25.064. Prohibited conduct by board members.** (a) A member of the  
30 personnel board may not, during the person's term of office,

31 (1) hold or campaign for elective office;

- 1 (2) be an officer of a political party or political group;
- 2 (3) lobby;
- 3 (4) employ a lobbyist; or
- 4 (5) assist in lobbying.

5 (b) In this section,

6 (1) "political group" has the meaning given to "group" in  
7 AS 15.13.400;

8 (2) "political party" has the meaning given in AS 15.13.400.

9 \* **Sec. 5.** AS 39.25.070 is amended to read:

10 **Sec. 39.25.070. Powers and duties of personnel board.** In addition to the  
11 other duties imposed by this chapter, the personnel board shall

12 (1) approve or disapprove amendments to the personnel rules in  
13 accordance with AS 39.25.140;

14 (2) consider and act upon recommendations for the extension of the  
15 partially exempt service and the classified service as provided in AS 39.25.130;

16 (3) hear and determine appeals by employees in the classified service  
17 as provided in AS 39.25.170;

18 (4) establish its own rules of procedure; three [TWO] members  
19 constitute a quorum for the transaction of business and three [TWO] affirmative votes  
20 are required for final action on matters acted upon by the board;

21 (5) elect a chair from its membership;

22 (6) have the power to administer oaths, subpoena witnesses, and  
23 compel the production of books and papers pertinent to a hearing authorized by this  
24 chapter;

25 (7) employ staff members, who shall be in the classified service;

26 (8) carry out its powers and duties under AS 39.52.

27 \* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to  
28 read:

29 TRANSITION. Notwithstanding AS 39.25.060(a), as amended by sec. 1 of this Act, a  
30 member of the personnel board serving on the effective date of this Act remains in office for  
31 the duration of the term to which appointed and confirmed. Within 60 days after the effective

1 date of this Act, the governor shall appoint one member from each of the two political parties  
2 whose candidate for governor received the highest number of votes and the second highest  
3 number of votes in the most recent preceding general election at which a governor was  
4 elected. The appointee from each of the two parties shall be chosen from a list of four names  
5 to be submitted by the central committee of the party. The governor shall appoint one member  
6 to a four-year term and one member to a six-year term. The governor shall specify the term of  
7 each member appointed under this section. When a vacancy occurs after these initial  
8 appointments, the governor shall appoint a member from one of the two political parties  
9 whose candidate for governor received the highest number of votes or the second highest  
10 number of votes in the most recent preceding general election at which a governor was elected  
11 until the membership of the board contains four members appointed from a list submitted by a  
12 political party. When the next vacancy occurs, the four members selected by the governor  
13 from a list submitted by a political party shall, by a majority vote, nominate to the governor an  
14 individual to serve as the fifth member of the board. The governor shall either appoint the  
15 nominee to the board or reject the nominee and request those four members to nominate  
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# Alaska State Legislature

**Chairman**  
State Affairs Committee

**Member**  
Judiciary Committee  
Energy Special Committee  
Joint Armed Services Special Committee  
Military and Veterans' Affairs Committee

**Finance Subcommittees**  
Administration  
Corrections  
Military and Veterans' Affairs



*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** Representative\_Bob\_Lynn@legis.state.ak.us  
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

**Session:**  
Alaska State Capitol #108  
Juneau, AK 99801-1182

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**Interim:**  
716 W. 4<sup>th</sup> Ave., #650  
Anchorage, AK 99501-2133

Phone: (907) 269-0205  
Fax: (907) 269-0207

**TO:** Members of the House State Affairs Committee

**FR:** Rep. Bob Lynn  
Chair, House State Affairs Committee

**RE:** Explanation of changes in HB 4

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The original version of HB 4 required the Chief Justice of the Alaska Supreme Court to populate a list of potential Personnel Board appointees from which the Governor would choose the eventual nominee. The Sponsor Substitute removes the Chief Justice from the equation at the Judiciary's urging. Instead, the sponsor substitute implements the same process for filling Personnel Board vacancies that is currently used to fill open positions on the Alaska Public Offices Commission. The proposed committee substitute addresses the transition from the old Personnel Board structure to the new one proposed in HB 4. Current members of the board would not have to be automatically removed once HB 4 takes effect, nor would the entire board have to be replaced if a third party won or came in second in a gubernatorial election.

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 4  
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TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

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9 governor was elected. The two appointees from each of these two parties shall be  
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1 **commission.** The term of office of a member is six years; **however, notwithstanding**  
 2 **AS 39.05.080(4), the member remains in office after expiration of the term until a**  
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23 number of votes in the most recent preceding general election at which a governor was  
24 elected. The appointee from each of the two parties shall be chosen from a list of four names  
25 to be submitted by the central committee of the party. The governor shall appoint one member  
26 to a five-year term and one member to a six-year term. The governor shall specify the term of  
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28 appointments, the governor shall appoint a member from one of the two political parties  
29 whose candidate for governor received the highest number of votes or the second highest  
30 number of votes in the most recent preceding general election at which a governor was elected  
31 until the membership of the board contains two appointed members from each of the political

1 parties.

SSHB 4

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Administration  
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*A Communication From*

**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

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## Sponsor Statement

### HB 4

***"An Act relating to the members of the state personnel board."***

In recent years, Alaska's processes for filing formal complaints against public officials have come under heightened scrutiny. The Legislature has made significant changes in the area of legislative ethics, but there is still work to be done to remove any appearance of impropriety from the complaint process for the executive branch.

Among other things, the Personnel Board is responsible for adjudicating a wide array of ethics complaints against the Governor, Lt. Governor, or Attorney General. Currently, the Governor enjoys complete autonomy to choose the people hearing these complaints, subject to their confirmation by the Legislature. The Personnel Board also typically operates on a 2:1 partisan split.

HB 4 replaces the current structure of the Personnel Board with the structure of the Alaska Public Offices Commission. So, the Personnel Board would extend from three members to five. These two additional board members will bring a broader range of viewpoints to the board.

Also, the Governor would no longer appoint whomever he or she likes, but would instead appoint nominees from lists generated by the central committees of the two parties receiving the highest number of votes in the previous gubernatorial election. The four board members chosen from these party lists would then select their own chairperson, who would be subject to approval by the Governor and confirmation by the Legislature.

For more information, contact **Thomas Reiker** at 907-465-4965 or [thomas\\_reiker@legis.state.ak.us](mailto:thomas_reiker@legis.state.ak.us)

HB 4 would likely afford each major party two seats on the board and force the Democrat and Republican board members to agree upon a chairperson. This would eliminate the “yes men” perception that can stem from the board’s current 2:1 partisan make-up. HB 4 would also significantly lower the hurdle for third parties to enjoy representation on the Personnel Board. Rather than having to win the gubernatorial election, a third party would need merely to come in second or convince the existing board members to nominate an independent or third party chairperson.

It is vital that Alaskans believe the complaint process for public figures is beyond reproach. HB 4 would reinforce this notion by making the Personnel Board more independent and less partisan. I hope you will join me in supporting these important changes.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 7, 2011

**SUBJECT:** Replacement of personnel board members under the proposed language of HB 4 (Work Order No. 27-LS0011M)

**TO:** Representative Bob Lynn  
Attn: Thomas Reiker

**FROM:** Lisa Moritz Kirsch   
Legislative Counsel

Thomas Reiker asked for a memo setting out the member appointment procedure under HB 4 when a third party gets the highest number of votes, or the second highest number of votes, in a gubernatorial election.

From a practical perspective, the governor may remove a sitting personnel board member for cause at any time, even though that member was properly appointed and the member's term is unexpired. The Alaska constitution provides that as to a regulatory or quasi-judicial board, members may be removed as provided by law.<sup>1</sup> The removal law for the personnel board is in existing AS 39.25.060(c); a personnel board member may be removed by the governor, but only "for cause." So if cause exists, it is possible a governor could replace a member, or members, at any time.

I found no expression of what "cause" might be for the personnel board, but other boards have used poor attendance at board meetings, non-participation at board meetings, or violations of law as cause for removal. In my opinion, the election alone is not cause for removal. As the term "cause" is used in the statute, it refers to the conduct of the board member, not intervening circumstances beyond the member's control.

If no cause for removal exists, vacancies and opportunities to appoint occur only when a term ends or a member resigns. Therefore, if a third party receives the highest or second highest number of votes in an election, and the board has two members from the party that failed to garner the highest or second highest number of votes, the governor could only appoint a member from the third party if there is a vacancy or cause for removal of a member.

It is possible that someone could read AS 39.25.060(a) as amended in HB 4 to require the governor to immediately strip out the major party members if a third party gubernatorial

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<sup>1</sup> Art. III, sec. 26.

Representative Bob Lynn  
February 7, 2011  
Page 2

candidate received the highest or second highest number of votes. The mandatory language, "the board shall be made up of two members of each of the two political parties" could lead to the conclusion that when one party is demoted to third place the board must be reconstituted to mirror the election result. But this interpretation would probably be rejected in court because it ignores the removal statute that requires cause to remove a member. In interpreting statutes, courts will harmonize statutes if possible.

However, the language that came from the APOC statute was designed to create a new board, and it may be wise to amend AS 39.25.060(a) in the bill to suit an existing board. Please let me know if you would like me to prepare a sponsor substitute with such changes.

LMK:plm  
11-057.plm

## **AS 39.25.060. Personnel Board.**

- (a) The personnel board is composed of three members appointed by the governor and confirmed by the legislature meeting in joint session. The term of office of a member is six years. A vacancy in an unexpired term shall be filled by appointment by the governor for the remainder of the term. The appointment is subject to confirmation in the same manner as a full-term appointment.
- (b) Members of the board may not be employees of the state. Not more than two members of the board may be members of the same political party.
- (c) A board member may be removed by the governor only for cause.
- (d) A member of the board may receive a per diem allowance and transportation expenses incurred in carrying out the member's duties.

## **AS 39.25.070. Powers and Duties of Personnel Board.**

In addition to the other duties imposed by this chapter, the personnel board shall

- (1) approve or disapprove amendments to the personnel rules in accordance with AS 39.25.140;
- (2) consider and act upon recommendations for the extension of the partially exempt service and the classified service as provided in AS 39.25.130;
- (3) hear and determine appeals by employees in the classified service as provided in AS 39.25.170 ;

- (4) establish its own rules of procedure; two members constitute a quorum for the transaction of business and two affirmative votes are required for final action on matters acted upon by the board;
- (5) elect a chair from its membership;
- (6) have the power to administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to a hearing authorized by this chapter;
- (7) employ staff members, who shall be in the classified service;
- (8) carry out its powers and duties under AS 39.52.

## **AS 39.25.140. Amendment of Personnel Rules.**

- (a) The director of personnel shall prepare and submit to the commissioner of administration any proposed amendments to the personnel rules for all positions and employees subject to this chapter.
- (b) The commissioner of administration shall review the amendments and submit them to the personnel board.
- (c) At least 30 days before the adoption, amendment, or repeal of a personnel rule, the secretary to the personnel board shall provide notice that the personnel board has the proposed action under consideration. The notice shall be
  - (1) posted in public buildings throughout the state;
  - (2) published in one or more newspapers of general circulation throughout the state;

(3) mailed to each person or group that filed a request for notice of proposed action with the secretary to the personnel board;  
(4) furnished to each member of the legislature and to the Legislative Affairs Agency.

- (d) The rules may provide for exemptions and modifications that are necessary to assure the continuity of federal grants to agencies supported in whole or in part by federal contributions.
- (e) The rules adopted under this chapter relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act. The rules shall be published in the Alaska Administrative Register and Code for informational purposes.
- (f) Failure to mail notice to a person as required in this section does not invalidate an action taken by the personnel board.
- (g) An amendment to the personnel rules takes effect 30 days after it is approved by the personnel board. The board, if requested to do so, may hold a public hearing on a proposed amendment.

## **AS 39.25.170. Hearings and Appeals Upon Dismissal, Demotion, or Suspension.**

- (a) An employee in the classified service who is dismissed, demoted, or suspended for more than 30 working days in a 12-month period shall be notified in writing by the employer of the action and the reason for it and may be heard publicly by the personnel board and may be represented by counsel at the hearing. In order to be heard, the complainant shall request a hearing within 15 days of dismissal, demotion or suspension.
- (b) If the board finds that the action complained of was taken for a political, racial, or religious reason, or in violation of this chapter or the rules

adopted under this chapter, the officer or employee shall be reinstated to the position without loss of pay or leave benefit for the period of dismissal, demotion, or suspension. In all other cases, the board shall report its findings and recommendations to both parties.

## **AS 39.52.310. Complaints.**

- (a) The attorney general may initiate a complaint, or elect to treat as a complaint, any matter disclosed under AS 39.52.210 , 39.52.220, 39.52.250, or 39.52.260. The attorney general may not, during a campaign period, initiate a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office.
- (b) A person may file a complaint with the attorney general regarding the conduct of a current or former public officer. A complaint must be in writing, be signed under oath, and contain a clear statement of the details of the alleged violation.
- (c) ***If a complaint alleges a violation of AS 39.52.110 - 39.52.190 by the governor, lieutenant governor, or the attorney general, the matter shall be referred to the personnel board.*** The personnel board shall return a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office as provided in (j) of this section if the complaint is initiated during a campaign period. The personnel board shall retain independent counsel who shall act in the place of the attorney general under (d) - (i) of this section, AS 39.52.320 - 39.52.350, and 39.52.360(c) and (d). Notwithstanding AS 36.30.015 (d), the personnel board may contract for or hire independent counsel under this subsection without notifying or securing the approval of the Department of Law. [emphasis added]

- (d)** The attorney general shall review each complaint filed, to determine whether it is properly completed and contains allegations which, if true, would constitute conduct in violation of this chapter. The attorney general may require the complainant to provide additional information before accepting the complaint. If the attorney general determines that the allegations in the complaint do not warrant an investigation, the attorney general shall dismiss the complaint with notice to the complainant and the subject of the complaint.
- (e)** The attorney general may refer a complaint to the subject's designated supervisor for resolution under AS 39.52.210 or 39.52.220.
- (f)** If the attorney general accepts a complaint for investigation, the attorney general shall serve a copy of the complaint upon the subject of the complaint, for a response. The attorney general may require the subject to provide, within 20 days after service, full and fair disclosure in writing of all facts and circumstances pertaining to the alleged violation. Misrepresentation of a material fact in a response to the attorney general is a violation of this chapter. Failure to answer within the prescribed time, or within any additional time period that may be granted in writing by the attorney general, may be considered an admission of the allegations in the complaint.
- (g)** If a complaint is accepted under (f) of this section, the attorney general shall investigate to determine whether a violation of this chapter has occurred. At any stage of an investigation or review, the attorney general may issue a subpoena under AS 39.52.380.
- (h)** A violation of this chapter may be investigated within two years after discovery of the alleged violation.
- (i)** The unwillingness of a complainant to assist in an investigation, the withdrawal of a complaint, or restitution by the subject of the complaint

may, but need not in and of itself, justify termination of an investigation or proceeding.

**(j)** The personnel board shall return a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for state office received during a campaign period to the complainant unless the governor or lieutenant governor, as appropriate, permits the personnel board to assume jurisdiction under this subsection. If the personnel board receives a complaint concerning the conduct of the governor or lieutenant governor who is a candidate during the campaign period, the personnel board shall immediately notify the subject of the complaint of the receipt of the complaint, of the suspension of the personnel board's jurisdiction during the campaign period, and of the candidate's right to waive the suspension of jurisdiction under this subsection. The candidate may, within 11 days after the personnel board mails or otherwise sends notice of the complaint to the candidate, notify the personnel board that the candidate chooses to have the personnel board proceed with the complaint under this section. If the candidate does not act within that time or if the candidate notifies the personnel board that the candidate is not waiving the suspension of jurisdiction, the personnel board shall return the complaint to the complainant with notice of the suspension of jurisdiction under this subsection and of the right of the complainant to file the complaint after the end of the campaign period.

**(k)** A campaign period under this section begins on the later of 45 days before a primary election in which the governor or lieutenant governor is a candidate for state office or the day on which the individual files as a candidate for state office and ends at the close of election day for the general or special election in which the individual is a candidate or on the day that the candidate withdraws from the election, if earlier. For a candidate who loses in the primary election, the campaign period ends on

the day that results of the primary election showing that another individual won the election are certified.

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number \_\_\_\_\_  
 Bill Version HB 004  
 ( ) Publish Date \_\_\_\_\_

Identifier (file name) HB004-DOA-DOP-02-18-11 Dept. Affected Administration  
 Title "An Act relating to members of the state personnel board" Appropriation Central Administrative Services  
 Allocation Personnel  
 Sponsor Representative Lynn  
 Requester House State Affairs OMB Component Number 56

**Expenditures/Revenues** (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**Why this fiscal note differs from previous version (if initial version, please note as such)**

Not applicable, initial version

Prepared by Nicki Neal, Director  
 Division Division of Personnel & Labor Relations  
 Approved by John Cramer, Deputy Administrator  
Department of Administration

Phone 465-4429  
 Date/Time 2/18/11 11:30 a.m.  
 Date 2/18/2011

FISCAL NOTE

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

BILL NO. HB 004

**Analysis**

The bill will have a negligible fiscal impact on the Division of Personnel and Labor Relations.