

SCOMM

#51:16



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

June 9, 1982

TO: Members of the Blue Ribbon Commission

FROM: Teresa B. Cramer *TBC*
Administrative Assistant

SUBJECT: Legislation Sponsored by the Commission

Enclosed are copies of HCS CSSB 193(Jud) am H, amending the State Personnel Act, and SCR 44, extending the life of the Blue Ribbon Commission. Both measures were sponsored by the Commission and passed the Legislature this session. In addition, a copy of CCS HB 697, authorizing preference for local hire, is included for your information.

HCS CSSB 193(Jud) am H. STATE PERSONNEL ACT

The Legislature made several changes to SB 193 as it moved through the House and Senate. The major changes are noted below.

Section 7. AS 39.25.110. EXEMPT SERVICE.

The bill was amended to include changes made to this statute during the First Session of the Legislature. In addition, the staff of the Governor's and Lieutenant Governor's offices are moved from the partially exempt to the exempt service except for those who are employees of councils, boards and commission. (See AS 39.25.110(20) and 39.25.-120(5).) Paragraph (7) continues to place correspondence teachers and teachers in skill centers in the exempt service.

Sections 11, 12 and 13. AS 39.25.140. AMENDMENT OF PERSONNEL RULES.

The amended bill requires additional public notice when there are proposed amendments to the Personnel Rules. The original bill required that amendments affecting matters of public policy be adopted in accordance with the Administrative Procedure Act, but this requirement has been deleted. The amended Rules are required to be published in the Administrative Code for informational purposes.

Section 14. AS 39.25.150. SCOPE OF THE RULES.

Paragraph (19) changes the language concerning the veterans' preference system, but does not change the basic structure of the system. Paragraph (24) adds language to provide for a transition period for employees whose positions are moved from the exempt or partially exempt service into the classified service. The transition period is intended to assist them in finding employment in the classified service.

Section 16. AS 39.25.160. GENERALLY.

Subsection (e) has language added to make clear that when a classified or partially exempt employee becomes a candidate for state or national office, his or her resignation is automatically effective on the date of filing a declaration of candidacy.

In addition to these changes the Legislature also deleted some recommendations of the Commission. Exempt and partially exempt employees will not have rights of appeal to the Personnel Board in cases of unlawful discrimination. The staff of the Division of Labor Relations is not placed in the partially exempt service. Those employees remain in the classified service.

CCS HB 697. LOCAL PREFERENCE

This bill in its original form would have eliminated most of the hiring system controls for nonpermanent positions lasting 120 days or less. The Conference Committee Substitute provides instead for a streamlined hiring process for nonpermanent and permanent seasonal positions when there are no local residents on the register. The hiring authority may select an individual from referrals made by the job service office of the Department of Labor serving the area.

RETIREMENT AND NEPOTISM LEGISLATION

The bills sponsored by the Commission to make changes in the retirement laws did not pass the Legislature, nor did SB 194, amending the nepotism laws.

TBC:lmk
Enclosures



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

May 24, 1982

TO: Representative Jack Fuller, Vice Chairman

FROM: Teresa B. Cramer *Jerry*
Administrative Assistant

SUBJECT: Amendment to HCS CSSB 193(Jud)

Page 6, line 28: After "executive director", delete "and". Insert
",". After "deputy director" insert ", hearing officers, and admini-
strative law judges"

The full text of paragraph (6) would then read:

(6) the executive director, deputy director, hearing officers,
and administrative law judges of the Alaska Public Utilities Commission.

This amendment would incorporate changes made to the State Personnel
Act after SB 193 was first introduced.

TBC:lmk

A M E N D M E N T

TO: HCS CSSB 193(Jud)

Page 6, Line 28:

After "executive director", delete "and", insert ","

After "deputy director" insert

", hearings officers, and administrative judges"

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

MEMORANDUM

TO: Representative Jack Fuller
Vice-Chairman

FROM: Teresa B. Cramer
Administrative Assistant

DATE: May 24, 1982

RE: HCS CSSB 193 (Jud) - Amending State Personnel Laws

The Blue Ribbon Commission sponsored Senate Bill 193 as a comprehensive revision of the State Personnel Act. It makes changes in some personnel practices, clarifies some provisions of the Act and makes it consistent with the Public Employment Relations Act. The State Personnel Act was written in 1961 and has not been revised as a whole since that time.

Page 2
Lines 6-25

Section 6. Amending AS 39.25.080. PUBLIC RECORDS.

This section sets out those personnel records which will be open to public inspection. All other personnel records will be kept confidential.

The current law provides that all records are public except those which the Personnel Rules make confidential. In fact, the amendment would not change the existing practice since those items listed are the only personnel records now open to the public.

Page 4
Line 4

Section 7. Amending AS 39.25.110. EXEMPT SERVICE.

This section adds statutory reference to employees of the Citizen's Advisory Commission on Federal Areas in Alaska (11)(G), petroleum engineers and petroleum geologists employed by the Oil and Gas Conservation Commission (14), employees of the state who reside in foreign countries (17), employees of the Alaska Seafood Marketing Institute (18), and firefighters employed by DNR for a fire emergency (19).

Page 4
Line 28

The House Committee Substitute adds paragraph (20) which changes employees of the Office of the Governor and the Lt. Governor from the partially exempt to the exempt service. Employees of councils, boards, or commissions established by statute in those offices are left in the partially exempt service.

Page 5
Line 2

Section 8. Amending AS 39.25.120. PARTIALLY EXEMPT SERVICE.

There was considerable debate about whether to place the employees of the Division of Labor Relations who are responsible for negotiating labor relations contracts into the partially exempt service. The current House Committee Substitute does not place them in the partially exempt service.

The Department of Administration recommended that these employees remain in the classified service to encourage career employees who would develop expertise in the area and to shield them from undue political pressure.

They are currently classified employees who are not members of any bargaining unit. At one time they were members of the Confidential Employees Association.

Page 5
Line 25

Paragraph (5) provides that employees of councils, boards and commissions established in the Office of the Governor or the Lt. Governor are in the partially exempt service. This retains current law. Other employees of the Office of the Governor are moved into the exempt service by the amendment to AS 39.25.110(20) (page 4, line 28 above).

Page 7
Line 22

Section 11. Amending AS 39.25.140(c). AMENDMENT OF PERSONNEL RULES.

The House Committee Substitute retains the existing procedures for amendment of the Personnel Rules. It adds requirements in paragraphs (2), (3), and (4) for greater notification to the public and to those Alaskans who have expressed an interest in the subject.

The Blue Ribbon Commission heard testimony from individuals that existing procedures on notification of rule changes were inadequate. People who wished to raise issues about the effect of some proposals did not learn of the amendments before the Personnel Board until after they had been adopted.

Page 8
Line 5

Section 12. Amending AS 39.25.140 (e). AMENDMENT OF PERSONNEL RULES.

This section changes existing law to provide that the Personnel Rules shall be published in the Alaska Administrative Code. Currently the law provides that they may be. Publication of the Rules will provide better notice to Alaskans concerned about state employment of the regulations governing that system.

Although collective bargaining has limited the application of the Rules to state employees they still remain effective in part for the state workforce. Any limits on their application could be indicated at the time of publication.

Page 8
Line 10

Section 13. Amending AS 39.25.140 (e). AMENDMENT OF PERSONNEL RULES.

Two subsections are added. Subsection (f) is a safeguard in case someone who has requested notification of rule changes inadvertently is omitted from the mailing list.

Subsection (g) retains current law that amendments are effective 30 days after approved by the Personnel Board.

Page 8
Line 16

Section 14. Amending AS 39.25.150. SCOPE OF THE RULES.

This section remains basically the same as the current law with the following exceptions:

Page 10
Line 21

(15) no longer sets a limit of 30 days to a period of disciplinary suspension.

Page 10
Line 23

(16) adds a requirement that the Personnel Rules include procedures for resolving disputes from the general public.

Page 11
Line 1

(19) sets out the provisions for veterans' preference in state employment in different form. The substance of the preference is basically unchanged. The definition of veteran is amended to require that an individual have served 181 days in active service instead of the present 90 days. This is in conformance with federal veterans' preference system. The definition of disabled veteran is also changed slightly. It no longer requires that an individual have a 10% service connected disability but instead specifies that the individual be entitled to compensation from the Veterans' Administration.

Page 12
Line 12

(22) provides that the Personnel Rules shall include procedures for programs which may be set up to facilitate the employment of disadvantaged persons. These programs may require some changes in usual personnel procedures.

Page 12
Line 16

(24) adds a requirement that the Rules provide for assistance in finding work to partially exempt or exempt employees whose positions are moved into the classified service. Classified employees must pass examinations to be hired. Exempt and partially exempt employees do not have to meet these merit system standards and may be unable to qualify for the positions which they previously held.

Page 14
Line 29

Section 17. AS 39.25.175. PROCEDURE

This section clarifies existing powers of the Personnel Board.

Page 16
Line 3

Section 19. AS 39.25.192. EMPLOYEE POLITICAL RIGHTS.

The political rights listed here exist in current law, as part of AS 39.25.160.

Paragraph (3) adds that while engaged on official business a state employee may not display or distribute partisan political material.

Paragraph (7) is new language to put into statute existing law permitting state employees to make political contributions.

May 15, 1982

TO: Members of the House Judiciary Committee

FROM: Teresa B. Cramer *IBC*
Administrative Assistant, Blue Ribbon Commission

SUBJECT: Amendment to HCS CSSB 193(Jud)

House Judiciary has proposed deleting the portion of the bill amending the State Personnel Act which had provided that those Personnel Rules which addressed matters of public policy should be adopted in accordance with the Administrative Procedures Act. One of the major concerns of members of the Blue Ribbon Commission in proposing this procedure was to insure that people affected by those rule changes would be notified of the proposals and have an opportunity to make their comments known to the Personnel Board before any changes were made. Accordingly, I would suggest that if the Rules are not made subject to the Administrative Procedures Act, that additional notice requirements be added to the State Personnel Act. The provisions suggested below are taken from the notice requirements of the APA with some changes to reflect the particular situation of the Personnel Rules.

Insert a new section 11 before the present Section 11 (page 7, lines 22-26 in the May 10, 1982, work draft):

Section ____ . AS 39.25.140(c) is repealed and reenacted to read:

(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 every person or group who has filed a request for notice of proposed action with the secretary to the personnel board;

(4) furnished to all incumbent State of Alaska legislators and the Legislative Affairs Agency.

Section ____ . AS 39.25.140 is amended by adding new subsections to read:

(d) The failure to mail notice to a person as provided in this section does not invalidate an action taken by the personnel board.

(e) The amendments have the effect of law 30 days after they are submitted to the personnel board. The board, if requested, may hold public hearings on the amendments.

Section _____. As 39.25.140(e) is renumbered and amended to read:

(f) 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 [MAY] be published in the Alaska Administrative Register and Code for informational purposes.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 14, 1982

SUBJECT: HCS CSSB 193 (Judiciary)

TO: Representative Ramona L. Barnes
Chairman, House Judiciary Committee

FROM: *THA* Linn H. Asper
Legislative Counsel

You have asked for an analysis of the changes made by the Judiciary Committee in the proposed Judiciary committee substitute for SB 193. The changes and the effect of the changes are as follows: (References are to the May 14, 1982 draft of the committee substitute)

1. In *Sec. 11, the proposed AS 39.25.140 has been deleted. This means that the comprehensive amendments to personnel rules adoption procedures that were passed by the Senate have been eliminated in favor of existing law on the subject. The Judiciary committee substitute changes AS 39.25.140(e) by making publication of personnel rules in the Alaska Administrative Register and Code mandatory instead of permissive.
2. In *Sec. 12, the proposed AS 39.25.150(3) has been changed to add language requiring open competitive examinations, when appropriate, in the employee selection process under the personnel rules. This change encourages the use of open competitive examinations in the state employee selection process without requiring them that they be used.
3. In *Sec. 12, the proposed AS 39.25.150(5) has been changed to add language to encourage the hiring of local residents. Since local hire provisions face constitutional difficulties the added language does not make local hire mandatory, instead providing for local hire "when appropriate".

May 14, 1982

4. In *Sec. 12, the proposed AS 39.25.150(22) deletes language that would allow personnel rules to provide for limitation of competition in state employment hiring decisions for disadvantaged persons. The deletion of this language does not mean that the personnel rules could not include a limited competition plan, but the legislative affirmation of such a plan has been removed.

5. In *Sec. 17, the proposed AS 39.25.192(3) has been changed by adding language to more clearly delineate what political conduct a state employee not engage in while engaged on official business of the state.

6. The proposed amendment to AS 39.25.170 has been deleted in the committee substitute, which means that the existing law regarding hearings and appeals upon dismissal, demotion or suspension of a state employee would continue to apply. The effect of this change would be to eliminate the expansion of employee hearing and appeal rights that is contemplated in the Senate passed version of the bill.

LHA:ljb



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT

Senator Bill Ray, Chairman

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(907) 465-4442

M E M O R A N D U M

May 13, 1982

TO: Senator Bill Ray, Chairman

FROM: Teresa B. Cramer *TBC*
Administrative Assistant

SUBJECT: Possible Amendment to HCS CSSB 193(Jud)

Since the House Judiciary Committee is considering deleting the section of SB 193 which provided that the Personnel Rules be adopted according to the APA, I thought it might be possible to propose language to them which would require that notice of any proposed Rule changes be widely published. I think that this was one of the major reasons why members of the Blue Ribbon Commission wanted the Rules to be adopted through the APA procedures. The language which I suggest below is taken from the notice requirements of the APA (AS 44.62.190), with changes to reflect the particular situation of the Personnel Rules. Section 11 (page 7, lines 22-26 in the May 10, 1982 work draft) would be replaced with the following:

AS 39.25.140(c) is repealed and reenacted to read:

(c) At least 30 days before the adoption, amendment, or repeal of a Personnel Rule, notice that the personnel board has the proposed action under consideration shall be

- (1) posted in public buildings throughout the state;
- (2) published in one or more newspapers of general circulation throughout the state, as the division of personnel prescribes;
- (3) mailed to every person who has filed a request for notice of proposed action with the division of personnel or the personnel board;

(4) when appropriate in the judgment of the division of personnel (A) mailed to a person or a group of persons whom the division of personnel believes is interested in the proposed action, and (B) published in the additional form and manner the division prescribes;

(5) furnished to all incumbent State of Alaska legislators and the Legislative Affairs Agency.

AS 39.25.140 is amended by adding new subsections to read:

(d) The failure to mail notice to a person as provided in this section does not invalidate an action taken by the personnel board.

(e) The amendments have the effect of law 30 days after they are submitted to the personnel board. The board, if requested, may hold public hearings on the amendments.

AS 39.25.140(e) is relettered and amended to read:

(f) 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 (MAY) be published in the Alaska Administrative Register and Code for informational purposes.

TBC:lmk

1 deputy director of the division of insurance in the Department of Com-
2 merce and Economic Development;

3 (16) the executive director and staff of the Alaska Public
4 Offices Commission.

5 * Sec. 9. AS 39.25.130(a) is amended to read:

6 (a) The [AFTER JUNE 30, 1961, THE] personnel board, upon written
7 recommendation of the commissioner of administration, may extend the
8 partially exempt service to include any position [WHICH WAS] in the
9 classified service [ON APRIL 19, 1960,] which, in the judgment of the
10 board:

11 (1) involves principal responsibility for the determination
12 of policy;

13 (2) involves principal responsibility for the way in which
14 policies are carried out; or

15 (3) involves responsibilities and duties of a type not sus-
16 ceptible to the ordinary recruiting and examining procedures.

17 * Sec. 10. AS 39.25.130(c) is amended to read:

18 (c) The [AFTER JUNE 30, 1961, THE] personnel board, upon written
19 recommendation of the commissioner of administration, may extend the
20 classified service to include any position [WHICH WAS] in the partially
21 exempt service [ON APRIL 19, 1960].

22 * Sec. 11. AS 39.25.140(e) is amended to read:

23 (e) The rules adopted under this chapter relate to the internal
24 management of state agencies and their adoption is not subject to the
25 Administrative Procedure Act. The rules shall [MAY] be published in the
26 Alaska Administrative Register and Code for informational purposes.

27 * Sec. 12. AS 39.25.150 is repealed and reenacted to read:

28 Sec. 39.25.150. SCOPE OF THE RULES. The personnel rules shall
29 provide for

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

May 11, 1982

SUBJECT: HCS CSSB 193 (Judiciary)

TO: Representative Ramona L. Barnes
Chairman, House Judiciary Committee

FROM: *LHA* Linn H. Asper
Legislative Counsel

You have asked for an analysis of the changes made by the Judiciary Committee in the proposed Judiciary committee substitute for SB 193. The changes and the effect of the changes are as follows: (References are to the May 10, 1982 draft of the committee substitute)

1. In *Sec. 8, the proposed AS 39.25.120(c)(17) has been deleted. This change removes various state employees in the division of labor relations, Department of Administration, from the partially exempt service.
2. In *Sec. 11, the proposed AS 39.25.140 has been deleted. This means that the comprehensive amendments to personnel rules adoption procedures that were passed by the Senate have been eliminated in favor of existing law on the subject. The Judiciary committee substitute changes AS 39.25.140(e) by making publication of personnel rules in the Alaska Administrative Register and Code mandatory instead of permissive.
3. In *Sec. 12, the proposed AS 39.25.150(3) has been changed to add language requiring open competitive examinations, if possible, in the employee selection process under the personnel rules. This change encourages the use of open competitive examinations in the state employee selection process without requiring them that they be used.

Representative Ramona L. Barnes
Page 2
May 11, 1982

4. In *Sec. 12, the proposed AS 39.25.150(5) has been changed to add language to encourage the hiring of local residents. Since local hire provisions face constitutional difficulties the added language does not make local hire mandatory, instead providing for local hire "when appropriate".

5. In *Sec. 12, the proposed AS 39.25.150(22) deletes language that would allow personnel rules to provide for limitation of competition in state employment hiring decisions for disadvantaged persons. The deletion of this language does not mean that the personnel rules could not include a limited competition plan, but the legislative affirmation of such a plan has been removed.

6. In *Sec. 17, the proposed AS 39.25.192(3) has been changed by adding language to more clearly delineate what political conduct a state employee not engage in while engaged on official business of the state.

7. The proposed amendment to AS 39.25.170 has been deleted in the committee substitute, which means that the existing law regarding hearings and appeals upon dismissal, demotion or suspension of a state employee would continue to apply. The effect of this change would be to eliminate the expansion of employee hearing and appeal rights that is contemplated in the Senate passed version of the bill.

LHA:jdn

May 10, 1982

Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Ray,

This letter is in response to your recent telephone call to Deputy Commissioner Fred Muller regarding the Administrative Procedure Act (APA) requirement in SB 193 (amendments to the State personnel laws).

Our difficulty with Section 12 of the bill, which requires that amendments to those personnel rules that involve matters of public policy be adopted in accordance with the APA, is a concern that while considerable resources would be consumed by this process other needed improvements to the personnel system could not be addressed.

With the increased desire of the legislature and ourselves to make the personnel system more responsive to the public, our direction has been to streamline the process making it faster and more accurate. We have been automating functions that historically have been very labor intensive. My direction has been to continue these efforts toward a more objective personnel system based on merit principles that is responsive to the needs of both state managers and the public.

Because less than 16 employees are wholly covered by the personnel rules, we are concerned about the efficient use of limited resources to follow a process that will have such limited impact. We do not dispute the idea that those people who want to know what the rules are should have greater access to them. To accomplish this we have proposed an interim compromise where the rules would be formatted and published in the Alaska Administrative Register and Code. This would address the need for public access, and allow us to continue making the system more timely and responsive.

You have asked Fred Muller to review those rules and procedures, that due to their nature, are internal and should be excluded in law from the APA. He did consult with the Attorney General's office on your request. Assistant Attorney General Art Peterson has prepared a memo on this subject

May 10, 1982

which I have enclosed with this letter. In summary, Mr. Peterson concludes that based on the language of the bill, the intent of the drafters (the Blue Ribbon Commission), and the intermingling of related concepts throughout the personnel rules, there are no rules that can stand alone.

SB 193, with the few changes that have been made, is a good bill and a tribute to you and the Commission. We have, and will continue to work positively and professionally with you in the best interests of the State. If the bill is to become a reality this session we need your help. All we ask is that you give us the opportunity to see if the public's need is satisfied by publishing the rules in the register and code. We invite the Commission to review and scrutinize our efforts during this period. If this doesn't work, we will join with the Blue Ribbon Commission in further addressing this critical issue.

Respectfully,



W. R. Hudson
Commissioner

WRH/bal

cc: Fred Muller
Keith Specking

Enclosure

MEMORANDUM

State of Alaska

TO: William R. Hudson
Commissioner
Department of Administration

DATE: May 7, 1982

FILE NO: 366-652-82

TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Handling of
personnel rules
under various
versions of SB 193

By: 
Arthur H. Peterson
Assistant Attorney General

Questions

On your behalf, Deputy Commissioner Fred Muller orally requested, today, this department's comments concerning:

1. the interpretation of proposed AS 39.25.140(c), in CSSB 193 (Jud) am, the Senate-passed version, and HCS CSSB 193 (SA), the latest House version; that statute would provide that personnel-rule amendments concerning matters of "public policy" would have to be adopted under the Administrative Procedure Act (APA);
2. interpretation of a variation on that idea, which would require personnel-rule amendments on certain statutorily specified subjects to be adopted under the APA;
3. interpretation of a proposal to require publication of the personnel rules in the Alaska Administrative Code (AAC), but not to require that their adoption or amendment be handled under the APA.

1.

Under the wording of the Senate-passed bill and the latest House version, identified above, two kinds of problems immediately arise: (1) Does the language really intend to distinguish between all of the current personnel rules plus adoption of new ones, on the one hand, and amendments to the rules, on the other hand? Would a new rule adopted in its entirety after the effective date of this Act be considered an amendment for the purposes of this provision? (2) What does the term "public policy" mean, and which of the personnel rules would fall within that term? Related to this first problem is subsection (h) of proposed AS 39.25.140, which requires "the amended rules" to be published in the Alaska Administrative Register and Code for informational purposes.

It makes little sense to have the current personnel rules published as they are now while having any amendments to them published in the AAC following the APA procedures. Such a split-publication approach would be confusing to the public as well as to the employees covered by those rules and the people charged with administering those rules. In addition, if a new rule is adopted, the confusion would be compounded by publishing it in only one or the other of the two possible places; yet duplication would be wasteful. This leads to the conclusion that all of the current personnel rules plus new rules plus amendments to both the current ones and the new ones should be published in the Alaska Administrative Code.

Having reached that conclusion, it would make little sense to adopt new rules without following the APA procedures, and to adopt "amendments" under the APA. The current rules could be placed in the AAC without going through the APA procedures, but even that would require a substantial effort to review them, put them in appropriate style and format, and weed out material that is not appropriate to the AAC. If all new personnel rules, and amendments to the current ones and the new ones, are to be adopted under the APA, one may question whether the delays necessitated by AS 44.62.060 (legal review and approval by attorney general), 44.62.180 (standard 30-day effective date), and 44.62.190 -- 44.62.210 (public notice and hearing) are worth the effort when so few people, considering the extent of coverage by collective bargaining agreements, are still covered by these general personnel rules.

The reference to "public policy" presents an interpretation question not too much different from that presented by the phrase "affects the public" in existing AS 44.62.640-(a)(2), the definition of "regulation". In applying both terms, our advice would be to err on the side of over-inclusion rather than under-inclusion. This is consistent with a long and growing line of supreme court decisions. Following the APA helps assure an opportunity for public involvement and eliminates an issue for potential litigation.

In the present context, it would be very difficult to distinguish between those personnel rules which "concern matters of public policy" and those which do not. In information furnished to this department by Director of Personnel Ken Kareen, the Blue Ribbon Commission on

personnel matters has suggested nine subjects that are matters of public policy, but they specifically state that the list is not all-inclusive. For example, the list includes recruitment and examinations. But where does that leave the personnel rule on classification. This department would have to answer that question by saying that classification is so integrally related to recruitment and examinations that the "amendment" of the personnel rule on classification would indeed be covered by the APA. The interrelationship of the subjects covered by the various personnel rules is such that there would be virtually nothing that could be dealt with in isolation and declared simply to be a matter of "internal management" that the proposed AS 39.25.140(d) would exempt from the APA procedures.

2.

The conclusion in the preceding paragraph pretty well suggests the answer to the second question posed by Deputy Commissioner Muller. If the statute were to attempt to enumerate certain personnel-rule subjects to be covered by the APA, your department would have to recognize that, although there might be a specific rule on examinations, for example, other rules containing provisions which affect examinations would have to be treated the same way as the rule which is primarily concerned with examinations. This interweaving of various related concepts throughout the personnel rules would make such a list difficult to write and difficult to administer. Again, erring on the side of including too much in the APA procedures would be the safest course. It is certainly the course least likely to inspire litigation.

3.

In Keith Specking's May 5, 1982 letter to Representative Ramona Barnes, Chairwoman of the House Judiciary Committee, where the bill now resides, he proposed an amendment to existing AS 39.25.140(e), which would require (instead of merely authorize) the personnel rules to be published in the Alaska Administrative Register and Code for informational purposes. If the idea behind some of these proposals is to increase public awareness and opportunity to read the various personnel rules, perhaps requiring that they be published in the AAC would do the job. I do not know the motivation behind these various proposals, so I cannot comment in depth on the likely success of this

proposal. Again, given the current limited applicability of these general personnel rules, one may ask whether the value of this publication of them would be worth the effort and expense.

Additional Comments

The proposed AS 39.25.140 presents some additional problems.

Subsection (d), with its reference to "internal management," appears to be distinguishing the provisions of that sort from those covered by subsection (c) regarding "public policy," somewhat similar to existing AS 44.62.640(a)(2). However, that distinction could be made clearer, and the exemption of these "internal management" provisions from the APA could be made clearer.

Subsection (e) refers to "the proposed amendments" without saying whether it is talking about the public policy ones or the internal management ones. Subsection (e), authorizing the personnel board to hold public hearings, would not make sense if applied to the public policy amendments, because, under subsection (c), they would already be covered by the mandatory hearing provisions of the APA.

Subsection (f) also uses the ambiguous "the proposed amendments," saying that the board may amend them. Does that mean that the board may amend them before they are adopted, which would seem to go without saying (especially under AS 44.62.210(a), with regard to the public policy ones), or after they are adopted, which would also seem to go without saying?

Subsection (g), also referring to "the proposed amendments," is similarly ambiguous. Is it the intent of its 45-day effective date provision to supersede AS 44.62.180, or does it only apply to the "internal management" regulations? This whole section (proposed AS 39.25.140) needs attention and should be rewritten.

WLC/AHP/11b



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

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Mail Stop 3123
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MEMORANDUM

May 6, 1982

TO: Senator Bill Ray

FROM: Teresa B. Cramer *IBC*
Administrative Assistant

SUBJECT: House Judiciary Action on SB 193

The House Judiciary Committee heard HCS CSSB 193(SA) yesterday afternoon. They asked that a workdraft be prepared with four amendments proposed by the Governor, three of which are contrary to Blue Ribbon Commission recommendations.

Amendment 1. Labor Relations Division Employees.

Page 7
Line 8

House Judiciary voted to delete paragraph (17) of AS 39.25.120. The paragraph adds the employees of the Labor Relations Division who are responsible for negotiating on behalf of the state to the partially exempt service. The effect of the Judiciary Committee amendment is to leave those employees in the classified service. Fred Muller advised the committee that he had spoken with Senator Ferguson who was initially in favor of placing them in the partially exempt service. According to Fred, Senator Ferguson now regrets having made the amendment on the Senate floor which added this paragraph.

A majority of the Blue Ribbon Commission had recommended that these employees be placed in the partially exempt service. There was not unanimity on the question. Those who favored the recommendation believed that these employees should be made more responsive to the policies of the Governor.

Amendment 2. Adopting the Personnel Rules according to the APA.

Page 8
Line 1

House Judiciary voted to require only that the Personnel Rules be published in the Administrative Code. The amendment does not require that the Rules be adopted in

accordance with the APA. Fred Muller testified that there would be a tremendous slow-down if the Rules had to be amended through APA procedures. It could require six to eight months to change procedures in the Division of Personnel. He suggested that publishing the Rules would let people know what was in them. He did not address the question I had raised of letting people have an opportunity to comment on changes which they believed inadvisable before the Rules were adopted.

Amendment 3. Local Hire.

Page 10
Line 2

This amendment is the same as the one proposed for HB 697 (the nonpermanent bill) and the commission favors it. The House Judiciary Committee adopted it.

Amendment 4. Appeals to the Personnel Board in Cases of Unlawful Discrimination.

Page 15
Line 20

The Committee voted to delete the entire section concerning appeals (Section 16) and leave the law as it is now, which limits appeals to classified employees. Fred pointed out that the Human Rights Commission already has jurisdiction over these cases and would probably be better able to process the cases than the Personnel Board. The Committee felt that it was unnecessary to have two avenues of appeal for partially exempt and exempt employees who are discriminated against. They apparently did not agree that it was desirable to have an in-house review mechanism.

TBC:lmk



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 5, 1982

The Honorable Ramona Barnes
Chairwoman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Chairwoman Barnes:

HCS CS SB 193 (SA) is now before your committee. It is my understanding that amendments previously requested by the Governor were included by the House State Affairs Committee. It has also come to my attention that Commissioner Hudson had requested amendments which were not included. These amendments are fully supported by this office.

Please amend HCS CS SB 193 (SA) as follows:

opposed by majority of BLC
Amendment 1:

Page 7, line 8

Change semi-colon to period so that line reads:

Offices Commission (;) .

Page 7, line 9

Delete paragraph 17. *(places LR negotiators in partially exempt service)*

opposed by majority of BLC
Amendment 2:

Page 8, line 1

Delete existing section 12 and insert new section 12 to read:

Sec. 12 AS 39.25.140(e) is amended to read:

- (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 (may) shall be published in the Alaska Administrative Register and Code for informational purposes.

May 5, 1982

Amendment 3:

OK Page 10, line 2

Add language to paragraph 5 so that it reads:

- (5) the procedure for certifying eligible candidates (;) including preference for local residents under appropriate circumstances ;

Amendment 4:

Page 15, line 20

Change existing Section 16(c) to:

- (c) An employee in the executive branch of state governments who has been dismissed, demoted, or suspended due to unlawful discrimination based on race, religion, color, or national origin, or because of age, handicap, sex, marital status, change in marital status, pregnancy, or parenthood may appeal the action to the State Commission for Human Rights or the personnel board.

The first requested amendment would result in Labor Relations working-level staff remaining in the classified service. Retaining this status maintains the integrity of the ongoing relationship between the State and labor organizations representing State employees, and provides a buffer from union applied political pressure on the professional staff. Retention of knowledge of the intricate workings of the State provides a continuity at the bargaining table that takes years to develop. The director of this division is already in the partially exempt service and is therefore subject to replacement at the discretion of those in higher authority.

Amendment two represents a compromise between present law and the current proposal. This amendment would command the publication of Personnel Rules in the Administrative Code thus providing greater public opportunity for review. It would also provide a period of time for the State to assess the impact of placing the Personnel Rules in the Administrative Code.

Amendment three is offered with the intent of providing more employment opportunities for rural residents.

BEC did not intend to limit appeals presently ~~State~~ does not preclude two

The Honorable
Ramona Barnes

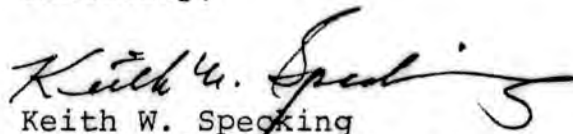
-3-

May 5, 1982

Amendment four is also a compromise between the proposed act and current practice. This amendment would have the effect of legally assuring an administrative hearing for employees who believe they have been discriminated against but avoiding the costs of redundant administrative processes. The employee could exercise the choice of appealing the action through AS 18.80 with the Human Rights Commission or pursuing relief from the personnel board.

Thank you for your consideration of these amendments.

Sincerely,



Keith W. Speaking
Legislative Assistant
to the Governor

cc: The Honorable Bill Ray
Chairman
Blue Ribbon Commission
on the Personnel Act

The Honorable William R. Hudson
Commissioner, Department of Administration



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

M E M O R A N D U M

April 30, 1982

TO: House Judiciary Committee

FROM: Teresa B. Cramer *IBC*
Administrative Assistant

SUBJECT: HCS CSSB 193 (SA) Amending State Personnel Laws

The Blue Ribbon Commission sponsored Senate Bill 193 as a comprehensive revision of the State Personnel Act. It makes changes in some personnel practices, expands the protections granted to employees in the exempt and partially exempt services and makes the Act consistent with the Public Employment Relations Act.

Those sections of the bill which present significant changes are analyzed briefly below.

Page 2
Lines 6-25

Section 6. Amending AS 39.25.080. PUBLIC RECORDS.

This section sets out those personnel records which will be open to public inspection. All other personnel records will be kept confidential.

The current law provides that all records are public except those which the Personnel Rules make confidential. In fact, the amendment would not change the existing practice since those items listed are the only personnel records now open to the public.

Page 2
Line 27 ff.

Section 7. Amending AS 39.25.090. COVERAGE OF CHAPTER.

This amendment provides that the State Personnel Act applies to exempt positions as specifically provided. The Committee Substitute gives added rights of appeal to exempt employees of the executive branch in cases of unlawful discrimination. (See Section 16)

Section 8. Amending AS 39.25.110. EXEMPT SERVICE.

Page 5
Line 2

The House Committee Substitute adds paragraph (20) which changes employees of the Office of the Governor and the Lt. Governor from the partially exempt to the exempt service. Employees of councils, boards, or commissions established by statute in those offices are left in the partially exempt service.

Page 4
Line 7 ff

In addition, this section does add statutory reference to employees of the Citizen's Advisory Commission on Federal Areas in Alaska (11)(G), petroleum engineers and petroleum geologists employed by the Oil and Gas Conservation Commission (14), employees of the state who reside in foreign countries (17), employees of the Alaska Seafood Marketing Institute (18), and firefighters employed by DNR for a fire emergency (19).

Page 7
Line 9

Section 9. Amending AS 39.25.120. PARTIALLY EXEMPT SERVICE.

In paragraph (17) the bill adds those employees of the Division of Labor Relations who are responsible for negotiating labor contracts with state employee organizations to the partially exempt service. These employees are currently members of the classified service but do not belong to any bargaining unit and are not members of any union or employee association. At one time they were members of the Confidential Employees Association.

Page 8
Line 1 ff

Section 12. Amending AS 39.25.140. AMENDMENT OF PERSONNEL RULES.

The Committee Substitute requires that those amendments to the Personnel Rules which are matters of public policy shall be adopted according to the Administrative Procedures Act. (Subsection (c), page 7, line 28)
The current law entirely exempts the Personnel Rules from the APA.

For those rules which are not matters of public policy, the Committee Substitute maintains the current system of adoption, but adds that the Personnel Board

may amend rules proposed to it (Subsection (f)). The Committee Substitute also requires that amended rules shall be published in the Administrative Code, (Subsection (h)).

Page 8
Line 29 ff

Section 13. Amending AS 39.25.150. SCOPE OF THE RULES.

This section remains basically the same as the current law with the following exceptions.

Page 11
Line 2

(15) no longer sets a limit of 30 days to a period of disciplinary suspension.

Page 11
Line 4

(16) adds a requirement that the Personnel Rules include procedures for resolving disputes from the general public.

Page 11
Line 10

(19) sets out the provisions for veterans' preference in state employment in different form. The substance of the preference is basically unchanged. The definition of veteran is amended to require that an individual have served 181 days in active service instead of the present 90 days. This is in conformance with federal veterans' preference system. The definition of disabled veteran is also changed slightly. It no longer requires that an individual have a 10% service connected disability but instead specifies that the individual be entitled to compensation from the Veterans' Administration.

Page 12
Line 21

(22) provides that the Personnel Rules shall include procedures for programs which may be set up to facilitate the employment of disadvantaged persons and permits the procedures to limit competition for hiring for those programs.

Page 12
Line 27

(24) adds a requirement that the Rules provide for assistance in finding work to partially exempt or exempt employees whose positions are moved into the classified service. Classified employees must pass examinations to be hired. Exempt and partially exempt employees do not have to meet these merit system standards and may be unable to qualify for the positions which they previously held.

Page 13 Section 14. Amending AS 39.25.153. PERSONNEL OFFICERS.
Line 4 ff

Subsection (a) provides that all personnel officers shall be employees of the department in which they serve.

Subsection (b) amends the powers granted to the personnel officers listed in the statute. These powers have never been exercised. They are retained in limited form by the Committee Substitute.

Page 13 Section 15. Amending AS 39.25.160. GENERALLY.
Line 28

Most of this section remains unchanged. The following subsections have been amended.

Page 14 Subsection (c) extends protection from being
Line 7 required to make a political contribution to all state employees. The current law protects only classified employees.

Page 14 Subsection (e) adds a requirement that partially
Line 12 exempt employees resign from state employment when seeking political office. The subsection also clarifies when the employee's position becomes vacant.

Page 14 Subsection (f) extends protection from unlawful
Line 18 discrimination to all state employees and applicants for state service. The current law is limited to members of the classified service.

Page 15 Section 16. Amending AS 39.25.170. HEARINGS AND
Line 11 ff APPEALS UPON DISMISSAL, DEMOTION OR SUSPENSION.

This section changes the statutes to reflect caselaw and adds that employees in the executive branch of state government who have been unlawfully discriminated against may appeal to the Personnel Board. The current law limits the protection of the State Personnel Act and the scope of appeals to the Personnel Board to members of the classified service. (Subsection (c)).

House Judiciary Committee
April 30, 1982
Page Five

The Committee Substitute provides in Subsection (i) that executive branch employees who the Personnel Board finds have been unlawfully discriminated against will be reinstated without loss of pay. This remedy is currently available only to classified employees. The Committee Substitute adds that the decision of the Personnel Board may be appealed to the Superior Court.

TBC:1mk

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

POUCH C

JUNEAU, ALASKA 99811

465-2200

April 20, 1982

Honorable Ray Metcalfe
Chairman, House State Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

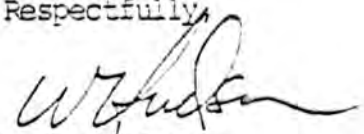
Dear Mr. Chairman:

CSSB 193 (Jud) am, amending the State's personnel laws, has been referred to your committee. We request that you make the following changes:

1. Delete Sec. 39.25.120(17)
2. Delete Section 12
3. Add to Sec. 39.25.150(5)
(;) including preference for local residents under appropriate circumstances;
4. Delete Section 16

Your consideration of these changes is greatly appreciated.

Respectfully,


W. R. Hudson
Commissioner

WRH/mjc

cc: Honorable Ramona Barnes
Chairwoman, House Judiciary
Committee

Keith Specking
Legislative Assistant
Office of the Governor

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS SB 193 (Jud)

Title An Act amending state personnel laws; and an effective date

Requested by _____ Date 04-16-82

II. FISCAL DETAIL

Agency Affected Administration

Program Category Affected Personnel

BRU, Program, Or Subprogram(s) Affected personnel, Personnel Board

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		42.2	22.6	24.2	25.8	27.7
200 TRAVEL		7.6	6.9	7.5	8.3	9.1
300 CONTRACTUAL		26.2				
400 COMMODITIES		.6	.6	.7	.8	.8
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		76.6	30.1	32.4	35.7	37.6

FUNDING (Thousands of Dollars)

GENERAL FUND		76.6	30.1	32.4	35.7	37.6
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		1	0	0	0	0
PART TIME		0	1	1	1	1
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Section 12 of CS SB 193 (Jud) am provides for adoption of amendments to the Personnel Rules that concern public policy under the Administrative Procedures Act, and for amended Rules (including those not concerning public policy) to be published in the Alaska Administrative Register and Code. CS SB 193 (Jud) am makes several minor changes to the Personnel Act that will require amending the Personnel Rules. The major costs for FY 83 are:

- 1) contracting with the Department of Law for an attorney for four months to:

- rewrite the current Personnel Rules to AAC standards
- draft amendments incorporating changes in the Personnel Act

IV. DATE 04-16-82

PREPARED BY Michael P. McMullen
AGENCY Administration - Division of Personnel

Original: Legislative Finance PHONE 465-1430

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

- modify amendments based on hearings
- file the amended rules with the Lt. Governor
- compile a Personnel Act - Personnel Rules cross-reference
- identify forms needing revision to reference the appropriate AAC provisions instead of the former rule
- Revise Administrative Manual and Operating Procedures to properly reference revised Personnel rules

(\$19.2 Thous.)

- 2) Personal Services to employ Regulations Specialist to revise existing procedures, manuals, forms and letters to properly cite revised Personnel rules. Position would be half-time after first year.

(\$42.2 Thous.)

- 3) travel and per diem for attorney and the Personnel Board for two hearings to adopt the rules and amendments as Code.

(\$2.8 Thous.)

- 4) public notice of the hearings and proposed amendments.

(\$.6 Thous.)

- 5) typing of drafts, revision and filing version.

(\$2.0 Thous.)

- 6) printing of forms incorporating AAC references.

(\$1.0 Thous.)

In subsequent years, one two-day hearings by the Personnel Board to adopt amendments is budgeted. Travel is inflated 10% annually and public notice costs at 8%. Personal Services inflated at 7% per year.

Section 13 of CS SB 193 (Jud) am contains a significant change in the definition and preference accorded to veterans. In addition to the need to amend the Personnel Rules accordingly, there is a need to incorporate the new provision in the automated Applicant Tracking System. This one time contractual service cost is estimated at \$4 thousand.

Section 16 of CS SB 193 (Jud) am duplicates AS 18.80 providing hearing and appeal rights to partially exempt and exempt employees of the Executive Branch for actions allegedly in violation of the employees' Civil Rights. It is assumed that these employees will file appeals in the same proportion to their numbers as other executive branch employees file complaints under AS 18.80 for the same actions. Each will require a two day hearing before the Personnel Board. Travel and per diem costs for FY 83 are \$4.8 thousand. They are inflated 10% annually. On this basis, four complaints per year are projected. Each complaint will require two days of Personnel Board business.

Point 1

AMEND THE PERSONNEL ACT

Object: INCREASE LOCAL HIRE

Action

Amend Alaska Statute 39.25.150 (6) to enable the adoption of personnel rules to provide for local preference. The specific language would be: "the procedure for certifying eligibles including preference for local residents under appropriate circumstances; . . ."

Costs

There is no executive branch cost associated with this change.

Fred Muller



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

April 19, 1982

TO: House State Affairs Committee

FROM: Teresa B. Cramer *TBC*
Administrative Assistant

SUBJECT: CSSB 193 (Jud) am

The Blue Ribbon Commission sponsored Senate Bill 193 as a comprehensive revision of the State Personnel Act. It makes changes in some personnel practices, expands the protections granted to employees in the exempt and partially exempt services and makes the Act consistent with the Public Employment Relations Act.

Those sections of the bill which present significant changes are analyzed briefly below.

Page 2
Lines 6-25

Section 6. Amending AS 39.25.080. PUBLIC RECORDS.

This section sets out those personnel records which will be open to public inspection. All other personnel records will be kept confidential.

The current law provides that all records are public except those which the Personnel Rules make confidential. In fact, the amendment would not change the existing practice since those items listed are the only personnel records now open to the public.

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Section 7. Amending AS 39.25.090. COVERAGE OF CHAPTER.

This amendment provides that the State Personnel Act applies to exempt positions as specifically provided. The Committee Substitute gives added rights of appeal to exempt employees of the executive branch in cases of unlawful discrimination. (See Section 16)

Page 3
Line 2 ff.

Section 8. Amending AS 39.25.110. EXEMPT SERVICE.

This section does not change the existing membership of the exempt service. It does add statutory reference to employees of the Citizen's Advisory Commission

on Federal Areas in Alaska (11)(G), petroleum engineers and petroleum geologists employed by the Oil and Gas Conservation Commission (14), employees of the state who reside in foreign countries (17), employees of the Alaska Seafood Marketing Institute (18), and firefighters employed by DNR for a fire emergency (19).

Page 7
Line 5

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Page 7
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The Committee Substitute requires that those amendments to the Personnel Rules which are matters of public policy shall be adopted according to the Administrative Procedures Act. (Subsection (c), page 7, line 28)
The current law entirely exempts the Personnel Rules from the APA.

For those rules which are not matters of public policy, the Committee Substitute maintains the current system of adoption, but adds that the Personnel Board may amend rules proposed to it (Subsection (f)). The Committee Substitute also requires that amended rules shall be published in the Administrative Code, (Subsection (h)).

Page 8
Line 19 ff

Section 13. Amending AS 39.25.150. SCOPE OF THE RULES.

This section remains basically the same as the current law with the following exceptions.

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(15) no longer sets a limit of 30 days to a period of disciplinary suspension.

Page 10
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(16) adds a requirement that the Personnel Rules include procedures for resolving disputes from the general public.

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(19) sets out the provisions for veterans' preference in state employment in different form. The substance of the preference is basically unchanged. The definition of veteran is amended to require that an individual have served 181 days in active service instead of the present 90 days. This is in conformance with federal veterans' preference system. The definition of disabled veteran is also changed slightly. It no longer requires that an individual have a 10% service connected disability but instead specifies that the individual be entitled to compensation from the Veterans' Administration.

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(22) provides that the Personnel Rules shall include procedures for programs which may be set up to facilitate the employment of disadvantaged persons and permits the procedures to limit competition for hiring for those programs.

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(24) adds a requirement that the Rules provide for assistance in finding work to partially exempt or exempt employees whose positions are moved into the classified service. Classified employees must pass examinations to be hired. Exempt and partially exempt employees do not have to meet these merit system standards and may be unable to qualify for the positions which they previously held.

Page 12
Line 23 ff

Section 14. Amending AS 39.25.153. PERSONNEL OFFICERS.

Subsection (a) provides that all personnel officers shall be employees of the department in which they serve.

Subsection (b) amends the powers granted to the personnel officers listed in the statute. These powers have never been exercised. They are retained in limited form by the Committee Substitute.

Page 13
Line 18

Section 15. Amending AS 39.25.160. GENERALLY.

Most of this section remains unchanged. The following subsections have been amended.

Page 13
Line 26

Subsection (c) extends protection from being required to make a political contribution to all state employees. The current law protects only classified employees.

Page 14
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Subsection (e) adds a requirement that partially exempt employees resign from state employment when seeking political office. The subsection also clarifies when the employee's position becomes vacant.

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Subsection (f) extends protection from unlawful discrimination to all state employees and applicants for state service. The current law is limited to members of the classified service.

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This section changes the statutes to reflect caselaw and adds that employees in the executive branch of state government who have been unlawfully discriminated against may appeal to the Personnel Board. The current law limits the protection of the State Personnel Act and the scope of appeals to the Personnel Board to members of the classified service. (Subsection (c)).

The Committee Substitute provides in Subsection (i) that executive branch employees who the Personnel Board finds have been unlawfully discriminated against will be reinstated without loss of pay. This remedy is currently available only to classified employees. The Committee Substitute adds that the decision of the Personnel Board may be appealed to the Superior Court.

TBC:lmk

2
JUNEAU EMPIRE, THURSDAY, APRIL 15, 1982

Senate votes to change state personnel rules

By The Associated Press

The state Senate voted Wednesday to revamp the State Personnel Act, which is the set of rules governing the state work force.

One change made by the bill (CSSB193 Judiciary amS) deals with preference rights granted to veterans who apply for state jobs. To be granted preference, a veteran must have completed 181 in active service, rather than 90 days as is required under current law. The change was made to conform with federal law.

Another change made in the bill was to place several sensitive positions — including certain petroleum geologists, firefighters employed in emergencies and employees of the

Alaska Seafood Marketing institute — in the "exempt service" category. That basically means the employees cannot belong to collective bargaining units and can be hired and fired at will.

Sen. Frank Ferguson, D-Kotzebue, successfully proposed an amendment on the Senate floor to include negotiators and other members of the state Division of Labor Relations in the partially exempt category, which means they also could not belong to state unions.

Ferguson argued that all collective bargaining agreements for state employees are negotiated by division officials. "So they're negotiating for themselves" under the present system, Ferguson said. He said such action constitutes a "conflict of interest."

The bill also defines which personnel records are public, and states that all other personnel records are to be confidential.



JUNEAU ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

April 14, 1982

TO: Senator Bill Ray, Chairman
FROM: Teresa B. Cramer *IBC*
Administrative Assistant
SUBJECT: CSSB 193 (Jud)

I have set out those sections of CSSB 193(Jud) which make substantive changes to the State Personnel Act and discussed briefly the nature of the change. I have not addressed the sections of the bill which make changes to improve the clarity of the language or to bring the law into accord with current practice.

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Section 6. Amending AS 39.25.080. PUBLIC RECORDS.

This section sets out those personnel records which will be open to public inspection. All other personnel records will be kept confidential.

The current law provides that all records are public except those which the Personnel Rules make confidential. In fact, the amendment would not change the existing practice since those items listed are the only personnel records now open to the public.

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by the Oil and Gas Conservation Commission (14), employees of the state who reside in foreign countries (17), employees of the Alaska Seafood Marketing Institute (18), and firefighters employed by DNR for a fire emergency (19).

Page 3
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Section 9. Amending AS 39.25.120. PARTIALLY EXEMPT SERVICE.

Although the structure of this section is changed, the substance of the current law is not changed by the Committee Substitute.

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The Committee Substitute requires that those amendments to the Personnel Rules which are matters of public policy shall be adopted according to the Administrative Procedures Act. (Subsection (c), page 7, line 28) The current law entirely exempts the Personnel Rules from the APA.

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TBC:lmk

MEMORANDUM

TERRY CRAMER FOR COMMENT
State of Alaska

TO: W. R. Hudson, Commissioner
Department of Administration

DATE: March 3, 1982

FILE NO

TELEPHONE NO: 465-4100

Serg
FROM: Ronald O. Skoog, Commissioner
Department of Fish and Game

SUBJECT: Amendments to 39.25.199

Your memo dated February 11, 1982, expressed concern about representatives of my Department testifying on CSSB 193 in contradiction to the recommendations of your Department. You realize, of course, that this is an area where our Departments disagree and, since we have not been able to resolve our differences, I believe it necessary to represent the concerns of Fish and Game.

You point out also that our testimony "...was done without notifying or coordinating your effort with this Department." I regret we did not do so, and I apologize for that lack. However, I wish to point out myself that your Department did not notify us of your recommendations nor attempt to coordinate your position with ours. Frankly, I would have expected you to do so, considering your role and responsibility in providing administrative services to the line Departments. This issue and the existing law has had considerable adverse impact on my Department, and I presume it has on other Departments as well. In that light, it seems logical to presume you would have negotiated a State position among the Departments concerned.

Our recent testimony is not the first time that we have brought forward concerns about non-permanent/seasonal hires. Russell H. Clark, our former Director of Administration, testified before House Resources on February 12, 1981, at their request. He also sent a letter to Senator Ray of the Blue Ribbon Commission on March 6, 1981, and one to Sandra Withers on March 24, 1981. The memo to Ms. Withers specifically requested that Labor Relations negotiate a letter of understanding with APEA to allow more flexibility in hiring 120-day-or-less non-permanents. APEA was in agreement with this action. As far as I can determine, no action was taken. I also have been told informally that APEA is still willing to make the necessary changes. You and I and our respective Deputies discussed the problem several months ago. It was brought up by Representative Fuller at the last Blue Ribbon Commission meeting.

Beverly Reaume, our current Director of Administration, brought up the problem at a meeting of the Directors of Administration "subcommittee on personnel" and your staff in December 1981. During the past year we have offered many suggestions ranging from minor changes to exemption of some provisions for employees working less than 120 days ("short-term" hires). Unfortunately, each time we are told that we are guilty of poor planning and that we are not making a good faith effort to abide by the law.

March 3, 1982

I have to disagree strongly on both counts--we have made adequate plans and we have made a good faith effort to hire under the system. We now have spent two field seasons under the system and what we are telling you is that "Yes, we can hire according to the existing law but the product is not worth the cost." We are faced with ever increasing demands from the public and fewer dollars to meet those demands. It is intolerable to me to spend these scarce resources on recruiting short-term employees. Furthermore, the public has made it very clear that they are tired of bureaucratic red tape, of which the current system is a prime example.

Let me respond specifically to the five recommendations contained in your February 11, 1982, memorandum.

First: You suggest we use non-permanent employees instead of permanent seasonals for less-than-120-days positions.

Fish and Game decided to establish these short-term positions as permanent seasonals based on two premises:

1. AS 39.25.195(c)(3) states the criteria to be used for establishing non-permanent positions.

"The hiring department or agency has certified that an immediate need exists and the director determines that the hiring department or agency could not reasonably have been expected to anticipate and met through the creation of a permanent position;...."

Fish and Game determined that its needs not only could be anticipated but also that these positions do occur each year and, therefore, we were obligated to establish "permanent seasonals" to comply with the law.

2. Furthermore, the red tape and possible civil penalties inherent in hiring non-permanents makes that option extremely unattractive.

Second: You suggest centralized recruiting as a means for achieving greater efficiency and for resolving the problem of competition between Divisions.

1. We have suggested to your Director of Personnel that the Department be given a master list of each classification used for short-term employment on a periodic basis. This list then could be worked for openings anticipated during that period and all hires made from that copy. Although Mr. Kareen has expressed support for centralized working of registers, he thus far has insisted on a separate register for each PCN. We can use responses from some previous register but we must contact all the additions to

each new register, as well as discard potential candidates among responses from previous registers because they have been removed from the register for one reason or the other. There still remains a gray area for people who failed to respond the first time, but are still on the register. Failure to respond runs about 80% when working most of the registers for short-time positions. Sometimes the candidates do not receive our letter until after the response date so they do not bother to respond. A good many of these not only may be available but desirable for the job. In other words, we need some modifications in procedural requirements on your part before greater centralization on our part is worthwhile.

2. Our short-term jobs are found predominantly in the following classifications: Fish and Game Technician II, III, IV; Fish Culturist I, II, III; and Fishery Biologist I. It is not at all unusual to find the same person on all seven registers. Just because someone is not interested in a Fish and Game Technician I job does not relieve us of having to contact him for a Fish and Game Technician III position, so we end up contacting the same person several times as various positions are to be filled.
3. Competition for the same people is due partly to the same person being on multiple registers. I do not believe we can say to a person that has just accepted a Fish Culturist I job that he is now not eligible for consideration as a Fish Culturist II. Likewise, we cannot tell a person that once he has accepted a one-month job that he is not eligible for consideration for a three-month job, nor that once he has accepted a job in Juneau he cannot consider an opening in Ketchikan, which might be his home. It is such factors as these that cause "competition" within the Department and defy resolution.

Third: You presented several suggestions for solving the "local hire" problem.

1. Local hire is indeed a problem under the current regulations. Many of our potential local hires are from the Fish Culturist I and Fish and Game Technician I, II, and III registers. Each of these registers contains 400-600 names of people who say they will work anywhere in the State. The ability to reach a given person in a local area by working the register in a legitimate manner--i.e., top five or five by five--is pure chance and good fortune. These classifications require little more than a warm body, a willing mind, and some paid work experience of any kind to get on the register. I have to believe you were misled by your personnel people to suggest seriously that we use "potential safety in the field" as a selection criterion. How do you measure that in an open recruitment effort? And where is it proven that a local resident will be safer in the field? The only realistic way to

obtain local hire while using a register is to allow appointment without regard to placement on the register--a suggestion that we have made numerous times.

2. There is still a continuing problem with getting local residents, particularly minorities, onto registers. On this point your Personnel Division recently agreed to open registers for continuing recruitment, provided turnaround on application examination is no more than three weeks. We agree that this time-frame is workable.

Fourth: You suggested that your Department would be willing to assume the selection responsibility for short-term hires.

I am sure that I need not tell you that I am no more willing to allow your Department to serve as a placement bureau for my personnel than you would be to allow Fish and Game to select your personnel.

Fifth: You suggested training to my managers in "recruitment and selection."

Believe me, my managers have had much long experience and are quite capable in recruitment and selection. The problem is getting people on registers, and would be resolved by open recruitment.

There are other questions raised during our recent testimony before the Senate Judiciary Committee, and on other occasions, that I believe appropriate to mention:

1. Both amendments proposed by Senator Rodey and Representative Bylsma would leave intact the requirement that persons hired meet the minimum qualifications of the classification. Fish and Game has never proposed otherwise.
2. It has been pointed out rather frequently that Fish and Game seems to be the only Department with a problem. Could be! You must keep in mind, however, that Fish and Game has 800 or more seasonal positions which are filled sometime during the April to October period each year. These are located throughout the State. It is not at all surprising that Fish and Game has problems with the present system and gets attention on the subject.
3. Then there is the "no-win situation" that we have been placed in. In a letter dated February 6, 1981, to the Governor, Senator Ray in referring to Fish and Game said that

"In the past these positions (seasonals) were classified as temporary positions and filled primarily by local residents. With the implementation of the non-permanent law, the

Department reclassified these jobs as permanent seasonals and filled them through hiring from a list of eligibles.

Unfortunately, this meant that many experienced local residents were not hired for the past season, either because they had not applied in time to be considered for placement on the register or because, when their applications were evaluated, they failed to place within the top five interested eligible candidates."

During our recent testimony, Senator Ray responded that one of the reasons the non-permanent hire law was enacted was because Fish and Game hired college students and sent them to rural areas rather than hire local residents. You tell me, which one we are guilty of? I do know that now we are far more likely to have to hire the college student simply because he ranks high on the register. Our preference has been and remains to hire the local resident wherever possible.

This memorandum is already far longer than I intended but, as you might surmise, it is a subject of considerable importance to the Department. It becomes all the more significant as we face possible budget reductions. Bill, in all fairness I believe we have brought our problem to your Department on a number of occasions. We have not received the help we need, and our problem remains. Thus, we have little alternative but to seek help elsewhere. The interest in the Legislature has been brought about partly by us, partly by Legislators' constituents complaining about the system.

I have enclosed for your information a copy of our testimony presented to the Senate Judiciary Committee and the House Labor and Commerce Committee on their request in response to amendments to the law, and to the House Finance Committee in response to their request. I support the pertinent changes proposed in Senate Bill 193 and House Bill 697, and I believe they will be beneficial to other agencies as well as to the public.

cc: Keith Specking
Senator Bill Ray



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

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MEMORANDUM

February 18, 1982

TO: Senator Bill Ray, Chairman

FROM: Teresa B. Cramer *TBC*
Administrative Assistant

SUBJECT: Fish and Game Seasonal Positions

I met with Beverly Reaume, Director of Administration for Fish and Game, and with Mary Jablonski, Special Assistant to the Commissioner, to discuss problems they identified in testimony before the Senate Judiciary Committee. Fish and Game is seeking changes in the nonpermanent law for positions which last less than 120 days. As a result of making these short-term appointments permanent seasonal, the department believes that it pays excessive amounts in benefits and also believes that having to hire from the registers causes excessive expense and delay without providing any benefit.

A. Classification of Positions as Permanent Seasonal

The department believes that these positions must be classified as permanent seasonal under the nonpermanent law adopted in 1979. They believe that the definition of a program or project (as not a regular and continuing function of a department or agency and as having a probable date of termination) forbids the classification of these positions as nonpermanent positions. They point out that the work is regular and continuing in that they do it every year and expect to continue to do so into the foreseeable future. So far as I could tell, they had not considered using AS 39.25.195(c)(1) which states that a nonpermanent position can be authorized when the legislature has appropriated money for the work in question knowing that it is to be performed by a nonpermanent employee. I would expect that the department could make sufficiently accurate forecasts of its staffing needs to permit presenting the legislature with the request for authorization of nonpermanent employees for these positions during the regular budget process.

The department could either request that the positions be established as regular nonpermanent appointments or that they be established as project nonpermanents, should the situation justify that classification. If the positions were regular nonpermanent positions,

then they would be limited to 120 days duration. If they were found to warrant classification as project or program positions, then the length of employment would be determined by the expected length of the project or program involved. The department has stated that its concerns are for positions which last less than 120 days, so the time limit should not raise a difficulty for them.

Apparently what the department believes would work for them is a system like the one developed in HB 697, which sets up a category on nonpermanent employees who would be exempt from all the requirements of the nonpermanent law except for the limit that employment last no longer than 120 days. The committee substitute proposed by the House Labor and Commerce Committee adds a prohibition against appointing the same employee to two consecutive special nonpermanent positions. The proposed amendment to the State Personnel Act places no restrictions on the commissioners of each department in the management of the system they set up except for the 120-day limit. They only have to make an initial determination that compliance with the nonpermanent law is too costly or is adverse to local hire. They are free to set minimum qualifications for the positions by departmental regulation, to evaluate applicants and to hire without regard to the relative qualifications of those applicants.

B. Cost of Benefits.

The department states that most of the positions which last less than 120 days are not career appointments. They do not usually find that individuals return year after year to the same job. Therefore, the department does not believe that it is appropriate to provide the kinds of career benefits which are part of the permanent seasonal package. The cost of providing for retirement, leave, and health insurance is excessive. The department would not have to provide them if the positions were reclassified as nonpermanent, whether or not the law were amended.

C. Problems With Working the Registers.

This is a major problem area identified by the department. As Ms. Reaume testified to the Senate Judiciary Committee, they have found working the registers extremely cumbersome, costly and fraught with delays. Recently she and Ms. Jablonski met with the Director of the Division of Personnel, and did arrange for two changes which they believe will address some of their concerns. The following is a list of their difficulties with the registers together with a discussion of each of the items raised.

- (1) The registers have too many names of people who are not really interested in the particular vacant positions Fish and Game has.

Some of the registers frequently used for these positions have 400 or more names on them. The department says that in some cases it is necessary to contact each of those listed in order to end up with one person who will actually accept the position. In order to limit the number of new applications for these registers, the Division of Personnel has closed these job classes. The department believes that if the classes are kept open, many of the applicants who are not really interested in that kind of employment will not apply. They apply now because they have only one short period in which the state will accept applications.

At its own request the department has been delegated authority to evaluate applications in these job classes. According to Mr. Kareen, they are about 3-1/2 months behind. He has agreed that when the department catches up with the evaluations, the job classes will remain open. The department hopes that then the number of applications will be reduced.

I do not know whether keeping the registers open will reduce the number of marginally interested applicants. Presumably the department has the expertise to evaluate the likelihood of success of this arrangement.

If the department's preferred hiring system were in place, then it would not matter how many applicants were on the register since the hiring authorities would not have to use one.

(2) Multiple Contacts to One Individual

The department has said that they have to contact the same individual many times during their peak hiring season. They fill a large number of positions in the same job class and must contact the people on the top of the list about each vacancy. This has resulted in one college student complaining to them that he received and had to reply to over 100 communications about job openings.

In the meeting between the department and Mr. Kareen, they agreed that for these positions, the department would receive one register for each job class and could hire all the vacancies in that job class from that single list for the whole month. This means that the department can coordinate its hiring notices to applicants for that period of time. This should reduce the burden on the department and also the obligations on the applicants to respond to an excessive number of job notices.

(3) Cost of Recruiting.

The department indicates that it spent \$14,000 in long distance telephone calls and telegrams when it recruited for the 175 nonpermanent positions in 1980. In 1981 the cost was \$28,000. These costs should be substantially reduced if the department was able to plan enough time to

communicate with applicants by letter instead. The Personnel Rules require that an individual be given five working days to respond to a telegram, 10 calendar days to respond to a written inquiry when the applicant lives in Alaska, and 14 calendar days when the applicant lives outside Alaska. PR 4 04.3. It would appear that by planning three or four additional weeks in advance, the department should be able to conduct the bulk of its recruiting effort by mail rather than by the more expensive telegraph and telephone methods presently used.

(4) Unreliability of Advance Commitments to Work.

The department's experience has been that for many of these very short jobs, people are not reliable about showing up for work if they accept the job too far in advance. This means that the department cannot make job offers in April or early May and count on having employees coming to work in June or later. In some instances at least, the problem has been that two divisions within the department have received commitments from the same individual.

With the new system of having the register be valid for an entire month, it may be possible for the department to record those who have accepted positions already and then to delete their names from consideration of subsequent job offers in that classification. This could reduce the number of "no-shows" which the department has experienced and enable them to make their staffing decisions earlier while still using the register system.

(5) Local Hire.

The department has said that it is difficult to persuade local people to apply for positions with the state, especially when the registers are only open for a short period of time. As discussed in Number (1) above, the registers will remain open once the department has reduced the backlog of job applications which are not yet evaluated. In addition, the department and the Division of Personnel could work together to recruit individuals from the areas where Fish and Game has vacancies, so that local individuals do appear on the registers.

The department still believes that it would be difficult to reach the local person when the registers are so full. Even using the five-plus-five certification system, they say that there are likely to be minority group members who fall with the top five minority persons but who are not local to the area in which the vacancy occurs.

One solution would be for the department to offer to pay transportation only from the nearest community of any size to the actual job site. In many cases now, the department pays transportation from

Anchorage or Fairbanks out to the community and then out to the salmon stream of whatever. These short-term jobs would be much less appealing to individuals not from the area if they were responsible for paying the cost of transportation to, for example, Unalaska, and then work for a short time and have to pay for their own return air fare. The problem is to insure there are local individuals on the registers.

D. Possible changes to the Nonpermanent Law

If the kinds of suggestions made above are not sufficient to resolve the difficulties of the department, it would be possible to make some changes in the nonpermanent hiring system without losing all controls. The following is one suggestion of how that might be done.

(1) The department may waive hiring from the register for nonpermanent positions only if the following are established:

- a. The department has presented proposed recruiting and selection procedures to the Division of Personnel and to the Division of EEO and each division has approved them.
- b. The positions which the department proposes to fill without hiring from the register have been approved by the Division of Personnel. The Director of Personnel shall consider the practicability of filling the positions from the register, the need of the department for speed in the selection process, and the effect on the state's merit system and commitment to equal employment opportunity.
- c. The hiring process shall be conducted from the community job site. (By this I don't mean the salmon stream or whatever, but the nearest community of reasonable size -- I don't know how to define it.)
- d. Each individual must meet the minimum qualifications for the job class.
- e. The department may not pay transportation costs for any individual hired under this system to the community job site. It may pay transportation from the community job site to the actual job location.
- f. The department shall report to the Director of the Division of Personnel and the Director of EEO on all positions filled under this system. The report shall include:
 - (i) actual recruiting and selection procedures used,
 - (ii) duration of work of each employee,

- (iii) EEO profile of workforce selected, and
- (iv) statement of qualifications for each individual selected.

This system would leave the department subject to all of the nonpermanent regulations except hiring from the register. It should be noted that at the Constitutional Convention, the debate about setting up the merit system included a statement by Mr. Sundborg, one of the most vocal supporters of the constitutional provision in which he said on page 2888:

Every merit system, including the United States Civil Service, is set up so as to have certain exceptions from it. . . . There are usually exceptions for those who work by the day, for those who have only temporary employment.

In the discussion, Mr. Ralph Rivers pointed out that the language proposed left to the legislature the directive to spell out the details, and that the legislature could decide to leave temporary employees outside the controls of the merit system if it wished to do so. Therefore, it would appear to be within the intent of the constitutional convention that temporary employees could be exempted from the merit system.

This leaves a policy question of whether it is advisable to do so. The nonpermanent law addressed the problems in the temporary hiring system and any system which changes that should make an effort to insure that those problems do not return. Before the nonpermanent law was passed, temporary employees were supposed to be hired from the registers when practicable. Many were not.

In this proposal, the department would still be required to plan for the positions it wished to exempt from the register requirement. There would be oversight from the Division of Personnel, and the limitations on payment of travel expenses might be sufficient to restrict the operation of hiring your buddy or your aunt's cousin. Individuals hired would be required to meet the minimum qualifications of the position, although this might be difficult to effectively review and enforce. However, since the Division of Personnel and the Division of EEO have oversight and approval powers, if there were any substantial abuse of the system, then presumably there would not be a second approval for the department in subsequent seasons.

This proposal does not address the effect of the collective bargaining agreement which presently applies to these employees.



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT

Senator Bill Ray, Chairman

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MEMORANDUM

February 9, 1982

TO: Senator Bill Ray, Chairman

FROM: Teresa B. Cramer *Terry*
Administrative Assistant

SUBJECT: Department of Administration's Recommended Changes to
CSSB 193(SA)

The Department of Administration has proposed a number of changes to CSSB 193(SA). Many fall within the area of clarification or insuring consistency and appear to me to be noncontroversial. Others would make a substantive change to the bill sponsored by the Commission. I have quoted each of the changes below, followed by the department's reasoning, and then discussed its effect on the bill.

Page 2 Recommendation: Delete exempt and
Line 29

Department reason: The rules pertain only to classified and partially exempt employees. By definition, exempt employees are excluded from personnel rules.

Discussion: The State Personnel Act and the Personnel Rules do currently pertain only to partially exempt and classified employees. However, changes proposed in SB 193 would extend certain provisions to include exempt service employees, notably by giving them appeal rights from acts of unlawful discrimination. The department proposes that these changes be deleted from the bill.

Page 3 Recommendation: Substitute for clarification and renumber
Lines 9-13

(2) justices, magistrates, judges and employees of the judicial branch including the Judicial Council.

Department reason: None given

Discussion: The change proposed would combine two paragraphs of AS 39.25.110 for clarification purposes. The existing paragraph (2) lists separately the judges and justices of those courts which are established by the State Constitution as well as those which are established by

statute. I don't suppose that this is a necessary distinction to make in this context.

Page 3 Recommendation: Substitute (8) certificated teachers
Lines 23-25 employed by the Department of Education as classroom
 teachers;

Department reason: Correspondence teachers do not teach
in classroom setting. They function as any classified
employee.

Discussion: Correspondence teachers are presently members of the exempt service. The Commission, in its initial work on the State Personnel Act, inadvertently deleted them from the exempt service. The State Affairs Committee Substitute placed them back in, largely, I believe, at the request of the correspondence teachers themselves. They are currently negotiating as a separate bargaining unit with the State under the Public Employment Relations Act. While the correspondence teachers work in an office in the State Office Building and do not have classroom responsibilities, they do serve as teachers in another sense. The Commission has not directly considered the merits of removing them from the exempt service.

Page 3 Recommendation: Delete ...the legislature, or a
Line 29 legislative committee

Department reason: Legislative employees by definition
AS 39.25.110(4) are exempt.

Discussion: The department is correct and this language can be removed without changing the substance of the law.

Page 4 Recommendation: Delete [paragraph (12)]
Line 12

Department reason: Legislative employees by definition
are exempt.

Discussion: The department is correct. Since the Ombudsman and his staff are legislative employees, they are placed in the exempt service by AS 39.25.110(4). If they need to be addressed separately, paragraph (4) could be amended to include specific reference to the Ombudsman's office.

Page 4 Recommendation: Delete: division of mental health
Lines 16-17 and developmental disabilities, Department of Health
 and Social Services

Department reason: All licensed physicians employed
by the State should be exempt not just those working
for mental health.

Discussion: The Commission has not discussed this proposed change. It
would extend the exempt service to include all licensed physicians
employed by the state. It is my understanding that the state placed
mental health physicians in the exempt service in order to offer salaries
in excess of the regular pay plan. It was not possible to find satis-
factory candidates to work as physicians in the mental health field
within the limit of the pay plan.

Page 4 Recommendation: Add section
Line 30 (22?) emergency firefighters employed by the Depart-
 ment of Natural Resources whose employment is limited
 to a fire emergency.

Department reason: Current and past use of fire-
fighters warrants placing them into exempt status.

Discussion: The Blue Ribbon Commission did not consider this issue but
it appears to make sense. In case of a fire emergency, the department
cannot take the time to prepare paperwork for nonpermanent positions and
the emergency may last longer than the 30 days to which an emergency
appointment is limited.

Page 5 Recommendation: Delete: except as provided in AS 39.-
Lines 9-10 25.170.

Department reason: Partially exempt employees should not
have the same rights as classified employees. Sufficient
protection is provided under current anti-discrimination
laws.

Discussion: The issue raised by this recommendation is whether state
employees in the partially exempt service should have an in-house appeal
to the Personnel Board or whether that entity should deal exclusively
with classified state employees. This issue is addressed in the discussion
following the department's recommended changes to AS 39.25.170, page 14,
line 14 through page 15, line 27.

Page 6 Recommendation: Delete [paragraph (7)]
Line 1

Department reason: This position is currently held by the
Director, Division of Forestry who is partially exempt.

Discussion: This change was not discussed by the Commission, but it
appears to be a noncontroversial clean-up of the Act.

Page 6 Recommendation: Delete [paragraph (15)]
Line 27

Department reason: This position has been reclassified
to a Director status and is partially exempt.

Discussion: At the time that the Commission was drafting SB 193, the
reclassification of the Chief of Subsistence had not been completed.
Therefore, the Commission did not consider this change. It appears to
be noncontroversial.

Page 8 Recommendation: Delete and substitute existing language
Lines 3-22 of AS 39.25.140(c)-(e).

Department reason: In addition to the fact that current
law excludes personnel rules from being subject to the
Administrative Procedures Act (APA) if the new language
becomes law, it will remove the protection and flexi-
bility so that almost every change instituted by the
Division of Personnel, whether a new test, recruiting
effort, the awarding of preference points for veterans
et al, would fall under lengthy public scrutiny
through APA. This will cause increasing and lengthy
delays in placing applicants on registers and reduce
flexibility to make the system better.

Discussion: The language of CSSB 193 provides that amendments to the
Personnel Rules which concern matters of public policy would be adopted
in accordance with the Administrative Procedure Act. The department
indicates that the change would require new tests, recruiting efforts
and the awarding of preference points for veterans to be subject to
adoption through the APA. This appears to be a misunderstanding of the
APA. Only in those instances in which the proposed change required
amendment of a Personnel Rule concerning matters of public policy would
hearings under the APA be required. But in those instances, the public
would have an opportunity to comment to the Personnel Board before it
acted on the question. This should not affect the time it would take to
place applicants on registers, so far as I can see.

Page 9 Recommendation: Delete the word "position" ...necessary
Line 6 position specifications....

Department reason: Specifications for classes are
general. Each position in a class could have a different
description.

Discussion: This appears to be a reasonable recommendation.

Page 10 Recommendation: Delete [paragraph (12)]
Lines 18-19

Department reason: By longstanding practice this is
accomplished by the State Administrative Manual, Section
7642-7684. Additionally, it only covers approximately
14 positions.

Discussion: This appears to be a reasonable recommendation. The 14
positions covered are those which are in the classified service but not
within an existing bargaining unit. Members of bargaining units who
transfer at the request of the state are reimbursed in accordance with
union contract provisions.

Page 11 Recommendation: Delete [paragraph (20)]: Replace with
Lines 7-29 Blue Ribbon recommendation as contained in original SB
and 193.

Page 12
Lines 1-3 Department reason: This will reduce confusion and provide
a better vehicle for veteran hire.

Discussion: The Senate Judiciary Committee discussed this paragraph at
its last meeting and addressed the substance of the department's recommenda-
tion in the amendments it agreed upon. One change made by the State
Affairs Committee Substitute which was not addressed occurs in the
definition of "veteran". The original version of SB 193 and also the
State Personnel Act define a veteran as a person who has served for 90
days. The Senate State Affairs Committee Substitute increased that to
181 days.

Page 12 Recommendation: Delete existing [paragraph (25)] substitute
Lines 24-27

The establishment of transition periods of up to 12
months for an employee to be reappointed to a classified
position which his position is withdrawn from the
partially exempt or exempt service and placed in the
classified service.

Department reason: The bill language provides guarantees that far exceed any current rules, statutes, or collective bargaining agreements and it is unlimited by time.

Discussion: Paragraph (25) was added by the Senate State Affairs Committee. The Blue Ribbon Commission considered the issue but did not recommend any changes to the present law, which provides no direct protections to employees whose jobs are withdrawn from the partially exempt or exempt service and placed in the classified service. The problem is that positions in the partially exempt and exempt services do not have to be filled by using merit system standards. Individuals selected do not have to meet minimum qualifications for the positions nor does the hiring authority have to select from the five highest ranking available eligibles on registers. The language proposed by the Department of Administration appears to be a compromise between the proposal of the State Affairs Committee and the existing situation.

Page 13 Recommendation: Change "the" to "departments" so
Line 15 that ... applicants on [THE] department eligible lists.

Department reason: This section deals with departmental personnel officers who do not test and place applicants onto a statewide list.

Discussion: The proposed change appears consistent with the Blue Ribbon Commission's recommendation concerning this section.

Page 13 Recommendation: Delete - (... or an exempt employee
Lines 26-27 in a position named in AS 39.25.110(3))

Department reason: Separation of powers.

Discussion: The people who would be removed from the scope of this section, which limits partisan political activity by state employees, are employees of the Judicial Council. Since they are part of the judicial branch, the separation of powers doctrine could be held to preclude the executive branch from interfering in personnel policies for them.

Page 14 Recommendation: Add - In the absence of a resignation,
Line 13 the appointing authority shall accept written evidence
 of candidacy as a resignation.

Department reason: An employee may not immediately inform his supervisor regarding nomination or candidacy for a state or national elective office. In the absence of a formal resignation, the employer should be able to effect a resignation.

Discussion: This recommendation would make running for state or national elective political office a self-executing resignation from employment in the classified or partially exempt service. It does not appear to change the intent of the language in the bill.

Page 14
Line 14

Recommendation: Add "... of a classified state...."

Department reason: This section deals with classified employees only not employees of the legislative and judicial branches.

Page 14
Line 15

Recommendation: Add "...applicant for classified state service...."

Department reason: This section deals with classified employees only not employees of the legislative and judicial branches.

Page 15
Lines 6, 12
and 27

Recommendation: An employee in the classified service...

Department reason: This section deals with classified employees only not employees of the legislative and judicial branches.

Discussion: The Blue Ribbon Commission proposed amendments to the State Personnel Act which would extend to partially exempt and exempt employees the right to appeal to the Personnel Board in cases of unlawful discrimination which affected their employment status. The changes which the department recommends would limit those appeal rights to classified state employees, as is the law now. The department gives as its reason that the section should deal only with classified employees and not those of the judicial or legislative branches. However, by limiting appeal rights to classified state employees, the department's recommendations would also preclude employees of the executive branch who are members of the exempt or partially exempt service from appealing. If the separation of powers doctrine makes it unwise to provide judicial, University of Alaska, and legislative branch employees an opportunity to bring cases before the Personnel Board, there still remains the issue of whether partially exempt and exempt executive branch employees should have that right. As the department noted earlier, all state employees are covered by the state's human rights' provisions which provide protection from employment discrimination.

Page 16
Line 19

Recommendation: Delete "by the employee" ... superior court.

Department reason: The decision of the board should be appealable by both the employer and the employee.

Discussion: The Senate State Affairs Committee added the language which the department proposes to change. The existing law does not provide for appeals by either party to the Superior Court. If the action complained of was due to discrimination or was in violation of the State Personnel Act or the Personnel Rules, then the Board has the power to order remedies on behalf of the employee. The Blue Ribbon Commission's bill retained the Board's powers as does the State Affairs Committee Substitute.

The existing law and the Blue Ribbon Commission's bill provide that in all other cases, the Board shall report its finding and recommendations to both parties. The State Affairs Committee added language to provide that in those instances, the employee can appeal the decision of the Personnel Board to the Superior Court. It is not clear to me what an employee would gain by such an appeal, since the Personnel Board has no power to provide for remedies in those cases.

Page 17
Line 29

Recommendation: Reword - express political opinions, provided that while engaged on official business, an employee may not display or distribute partisan political material in any form or manner.

Department reason: None given.

Discussion: The existing language permits a state employee to express political opinions. The department recommends language to make clear that an employee may not exercise that right while conducting state business. The section applies to all state employees, whether in the classified, partially exempt or exempt service. As worded, the recommendation would forbid any state employee even from wearing a campaign button while on the job. The Blue Ribbon Commission did not discuss whether the Act should address any limitation of political expression or how far such a limitation should go.

Page 18
Lines 8-27

Recommendation: Delete sections 20 and 21

Department reason: Exempt and partially exempt employees do not compete for their positions. Their knowledge, skills, abilities and salary range could differ considerably from their corresponding class and range in this classified service.

Senator Bill Ray, Chairman
February 9, 1982
Page Nine

Discussion: The Senate State Affairs Committee added these two sections which provide that the employees of the Commercial Fisheries Limited Entry Commission and of the Postsecondary Education Commission be placed in the classified service. The Blue Ribbon Commission discussed this issue but did not recommend making any changes. The Senate Judiciary Committee has recommended deleting these two sections.

Page 18
Line 29

Recommendation: Effective date should be changed to
July 1, 1982.

Discussion: This makes sense.

TBC:lmk



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

January 27, 1982

TO: Members of the Senate Judiciary Committee

FROM: Teresa B. Cramer *BC*
Administrative Assistant

SUBJECT: CSSB 193(SA) Amending the State Personnel Act

The Blue Ribbon Commission sponsored SB 193 to make a comprehensive revision of the State Personnel Act, to change personnel practices, to expand protections granted employees in the exempt and partially exempt services, and to make the Act consistent with the Public Employment Relations Act. Last session, Senate State Affairs considered and amended the bill.

The State Personnel Act establishes the state personnel system and implements the constitutional requirement that the merit principle govern employment of persons by the state. Article XII, Section 6. Some of its provisions are superseded by provisions of collective bargaining agreements between the state and employee organizations. It provides the entire personnel system for the 19 or 20 classified service employees who are not members of a bargaining unit and for all partially exempt employees to the extent it applies to them.

The major changes proposed in CSSB 193(SA) are discussed briefly below. I have noted also some of the amendments made by the State Affairs Committee.

Section 6: AS 39.25.080. PUBLIC RECORDS.

Page 2
Line 6

The amendment lists those parts of the personnel records which are to be considered public records and is consistent with the current Personnel Rules. The law presently says that all records except those which the Rules require to be held confidential are open to public inspection.

Section 12: AS 39.25.140. AMENDMENT OF PERSONNEL RULES.

Page 7
Line 25

Subsection (c) of this section changes current law to require that those Personnel Rules which concern

matters of public policy be adopted in accordance with the Administration Procedure Act. (Page 8, line 3)
Subsection (f) empowers the Personnel Board to amend the Rules presented to it. (Page 8, line 17)

Section 13: AS 39.25.150. SCOPE OF THE RULES.

Page 11
Line 1

Paragraph (17) adds new language to provide that the Personnel Rules shall include procedures for resolving grievances of the general public concerning the operation of the state personnel system. Grievances might arise from the state application and testing process or the selection process. There is presently no system in place for addressing these grievances, although they are handled on an informal basis by the Division of Personnel.

Page 11
Line 7

Paragraph (20) addresses veterans' preference. The original bill did not change the substance of the existing preference system. The State Affairs Committee adopted amendments which do change the existing system.

Page 12
Line 18

Paragraph (23) adds new language to provide that rules be adopted permitting the state to establish programs facilitating the employment of disadvantaged persons. These might include CETA programs and the Senior Community Service Employment Program (SCSEP).

Page 12
Line 24

The State Affairs Committee Substitute adds paragraph (25) which would guarantee that an employee's salary would not be reduced if his position were moved from the partially exempt or exempt service and placed into the classified service.

Section 14: AS 39.25.153. PERSONNEL OFFICERS.

Page 13
Line 1

Subsection (a) provides that if a department has a personnel officer, he or she shall be an employee of the department rather than of the Division of Personnel. This keeps in force the current practice. As employees of the department, personnel officers are better able to maintain an effective working relationship with the staff of the department they serve.

Subsection (b) limits powers now given certain

personnel officers to amend the Personnel Rules when dealing with employees in job classes unique to that department.

Section 15 AS 39.25.160. GENERALLY.

Page 13
Line 25

Subsection (c) extends the protection from being required to make contributions to a political party to all state employees. (Page 14, line 5). Only members of the classified service now have that protection.

Subsection (e) adds a requirement that members of the partially exempt service resign from state employment when seeking political office. (Page 14, line 10)

Subsection (f) extends protection from unlawful discrimination to all state employees. It applies now only to members of the classified service. (Page 14, line 14)

Section 16: AS 39.25.170. HEARINGS AND APPEALS UPON DISMISSAL, DEMOTION, OR SUSPENSION.

Page 15
Line 4

Subsections (c) and (i) provide that employees who have been unlawfully discriminated against may appeal to the Personnel Board, whether or not they are members of the classified service. This implements the expanded protection granted in Section 15, which amends AS 39.25.160(f). Other paragraphs of Section 16 codify current case law.

Appeals by employees in the classified service who are members of bargaining units will be governed by the labor agreement in force rather than by the State Personnel Act, so this section applies to partially exempt employees and to those classified employees who are not members of a union.

Section 20: AS 14.40.913(a).

Page 18
Line 8

The Committee Substitute amends the Postsecondary Education Commission statutes to provide that all of its employees except the executive officer will be members of the classified service. They are presently members of the exempt service.

Section 21: AS 16.43.080(a).

Page 18
Line 22

The Committee Substitute amends the Alaska Commercial Fisheries Limited Entry Commission statutes to place all employees except the executive officer into the classified service. They are presently members of the exempt service.

Section 23: EFFECTIVE DATE.

Page 18
Line 29

The effective date proposed in the bill is now out-of-date and should be amended to July 1, 1982.

TBC:lmk



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

MEMORANDUM

May 19, 1981

TO: Members of the Blue Ribbon Commission

FROM: Teresa B. Cramer *Terry*
Administrative Assistant

SUBJECT: Analysis of CSSB 193 (SA)

TITLE

SB: Pg. 1 The Committee Substitute amends the title because it
Line 6 adds sections 20 and 21 which amend personnel laws not
found in the State Personnel Act.

CSSB: Pg 1
Line 6

Section 8: AS 39.25.110. EXEMPT SERVICE

SB: Pg 3 The Committee Substitute adds a paragraph placing corres-
Lines 22/23 pondence teachers and teachers in skill centers operated
by the Department of Education back in the exempt service.
CSSB: Pg 3 The remaining paragraphs are renumbered.
Lines 23/25

SB: Pg 4 The Committee Substitute removes the Alaska Commercial
Line 1 Fisheries Entry Commission from the list of boards whose
staff are all members of the exempt service. It adds
paragraph (14) which places the executive officer of the
Limited Entry Commission in the exempt service. The
CSSB: Pg 4 Committee Substitute also adds Section 21 which amends
Lines 3 & 10 the Limited Entry Commission statutes to specify that
and Pg 18 employees of the commission except the executive officer
Line 22 are in the classified service.

SB: Pg 4 The Committee Substitute adds paragraph (21) which places
Line 24 the officers and employees of the state who reside in
 foreign countries in the exempt service.

CSSB: Pg 4
Line 28

Section 9: AS 39.25.120. PARTIALLY EXEMPT SERVICE

SB: Pg 7 The Committee Substitute deletes paragraph (19) of the
Line 3 Senate Bill, which places the staff of the Division of
 Labor Relations responsible for representing the state
CSSB: Pg 7 in collective bargaining negotiations in the partially
Line 7 exempt service. These employees would therefore remain
 in the classified service.

Section 12: AS 39.25.140. AMENDMENT OF PERSONNEL RULES

SB: Pg 8 The Committee Substitute amends the Senate Bill by
Line 2 to deleting subsection (f) which defined "matters of
Pg 9 public policy". It also reorganizes the remaining
Line 5 subsections, so that subsection (c) of the Committee
 Substitute requires that if the proposed amendments
CSSB: Pg 8 concern matters of public policy, they are subject to
Lines 3-22 the APA. The Senate Bill placed this provision in
 subsection (d). The Committee Substitute does grant
 the Personnel Board the power to amend the rules and
 provides that the amended rules shall be published
 in the Administrative Code for informational purposes.

Section 13: AS 39.25.150. SCOPE OF THE RULES

SB: Pg 10 The Committee Substitute deletes the word "efficiently"
Line 4 from paragraph (3) which requires that employee selection
 methods test the capacity and fitness of the person
CSSB: Pg 9 examined.
Line 21

SB: Pg 11
Line 7 to
Pg 12
Line 3

The Committee Substitute amends the veterans preference paragraph to require that the veteran may only use the points once, at a time to be selected by the veteran. This is a change from the existing system (which the Senate Bill retained) which permits the points to be added to all of the job classes a veteran applies for until he is hired by the state. At that time the points are removed from his scores. The Committee Substitute retains the requirement that the preference may not be used within the area of promotion.

CSSB: Pg 11
Line 19 to
Pg 12
Line 11

The Committee Substitute also amends the definitions of "veteran" and "disabled veterans".

SB: Pg 13
Line 2

The Committee Substitute adds paragraph (25) to guarantee partially exempt or exempt employees a similar job class assignment if their positions are moved to the classified service. The Committee Substitute rennumbers the remaining paragraph.

CSSB: Pg 12
Line 24

Section 15. AS 39.25.160. GENERALLY

SB: Pg 14
Line 21

The Committee Substitute adds to subsection (f) prohibitions against discrimination based on the following reasons: marital status, change in marital status, pregnancy, parenthood, or other reason not related to merit.

CSSB: Pg 14
Line 18

Section 16. AS 39.25.160. HEARINGS AND APPEALS

SB: Pg 15
Line 16

The Committee Substitute makes the same changes to the protected classes in AS 39.25.170(c) as it did to AS 39.25.160(f) in section 15 above.

CSSB: Pg 15
Line 13

SB: Pg 16 The Committee Substitute amends subsection (h) to make
Line 7 clear that in a hearing before the Personnel Board an
employee has the right to confront and cross-examine
CSSB: Pg 16 witnesses. The Committee Substitute retains the
Line 6 provision that technical rules of evidence do not
apply to the hearing, but adds language requiring that
all testimony shall be taken under oath.

SB: Pg 16 In subsection (i) the Committee Substitute repeats the
Line 10 additions to protected classes which are found in Section
15, AS 39.25.160(f), and Section 16, AS 39.25.170(c).
CSSB: Pg 16
Line 10

Section 20. AS 14.40.913(a)

SB: Pg 18 The Committee Substitute adds this section to the
Line 4 Senate Bill. It amends the Postsecondary Education
Commission statutes by providing that all of the
CSSB: Pg 18 commission's employees except the executive officer
Line 8 are members of the classified service. Those employees
are presently placed in the exempt service.

Section 21. AS 16.43.080(a)

SB: Pg 18 The Committee Substitute also adds this section to the
Line 4 Senate Bill. It amends the Alaska Commercial Fisheries
Limited Entry Commission statutes to place only the
CSSB: Pg 18 executive officer of the commission in the exempt service.
Line 22 All of the other employees of the commission are moved
from the exempt service to the classified service.

TBC:lmk



ombudsman

Frank Flavin

State of Alaska

Reply to:

☐ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☒ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

MEMO

DATE: May 14, 1981

TO: Senate State Affairs Committee

FROM: Frank Flavin, Ombudsman

RE: Proposed CS for Senate Bill 193

Proposed Amendment:

In section 39.25.140 at page 8, line 3 of the proposed CS insert subsection (d) of Sec. 39.25.140 of the original SB 193 found at page 8 lines 6 through 8. This subsection to become subsection (c) in the proposed CS to read:

(c) If the proposed amendments concern matters of public policy, the personnel board shall adopt them in accordance with the Administrative Procedure Act (AS 44.62).

The present subsection (c) at page 8 line 3 of proposed CS should become subsection (d) and read:

(d) If the proposed amendments relate only to internal management of the state agencies [when the proposed amendments are submitted to the personnel board,] the commissioner of administration shall post notice in public buildings throughout the state that the personnel board has the proposed amendments under consideration. The notice required by this subsection shall be posted at least 30 days before any decision is made to amend the personnel rules and shall include an address for the receipt of written comments.

Subsections (d), (e), (f) and (g) should be respectively relettered as subsections (e), (f), (g) and (h).

BASIS

As drafted, Sec. 34.25.140 of the proposed CS presumes that amendment of personnel rules is a matter of concern only to state employees and management. In fact, many procedures, such as recruitment, examination, selection methods and eligible lists directly impact members of the general public. It is safe to say there are as many people who would like to be state employees as those who are. We receive many complaints concerning state hiring practices. The Administrative Procedures Act is the established vehicle for insuring participation by members of the general public.

*Adopted
5/19/81
moved
bill out
of index
recs*



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

MEMORANDUM

May 11, 1981

TO: Members of the Blue Ribbon Commission

FROM: Teresa B. Cramer *Jerry*
Administrative Assistant

SUBJECT: Work Draft for CSSB 193 (SA) -- Amending the State Personnel Act

I have received a work draft for the Senate State Affairs Committee Substitute to SB 193. The changes from the bill are noted below, with references given to both the Senate Bill as introduced by the Blue Ribbon Commission (SB) and to the work draft (CSSB). There is a hearing scheduled on the bill on Tuesday, May 12th, at 1:30 p.m. in the Behrends Building.

AS 39.25.110. EXEMPT SERVICE.

SB: Pg 3 The committee substitute returns correspondence teachers
Line 23 and teachers in skill centers in the Department of Education
 to the exempt service. They were inadvertently deleted
CSSB: Pg 3 from the exempt service when the commission removed
Line 23 language in the State Personnel Act which placed teachers
 in schools operated by the state in the exempt service.
 The personnel office in the Department of Education had
 advised me that there were no longer any such employees.
 They overlooked correspondence teachers and skill center
 teachers in making that statement.

Because the committee substitute adds this new paragraph, the remaining paragraphs are renumbered.

SB: Pg 4 The committee substitute adds a new paragraph placing
Line 24 "officers and employees of the state who reside in
 foreign countries" in the exempt service.

CSSB: Pg 4
Line 28

AS 39.25.120. PARTIALLY EXEMPT SERVICE.

SB: Pg 7 The committee substitute deletes language proposed in
Line 3 the bill which would have placed the employees in the
 Division of Labor Relations who are responsible for
CSSB: Pg 7 representing the state in negotiations with unions in
Line 7 the partially exempt service.

AS 39.25.140. AMENDMENT OF PERSONNEL RULES.

SB: Pgs. 8-9 The committee substitute deletes the provisions of
Line 6 SB 193 which would have made Personnel Rules which
 concern matters of public policy as defined in the bill
 subject to the Administrative Procedures Act. It also
CSSB: Pg 9 retains the deletion of language in the statute which
Line 6 describes the rules as matters of internal management
 and exempts them entirely from the APA. It would therefore
 appear that the rules are made subject to the APA and
 that only those rules which fall within the APA definition
 of internal management of state agencies would be exempt
 from the hearing process of the APA rule-making.

There is language which might suggest a contrary interpretation to the committee substitute. It provides that the amended rules shall be published in the Administrative Code for informational purposes. This retains language from the statute but suggests a conflict with the APA, since regulations which are adopted under the APA are required to be filed with the Lt. Governor who publishes them in the Code. (AS 44.62.040 and 44.62.130)

The committee substitute retains language proposed in SB 193 which gives the Personnel Board the power to amend proposed rules and which provides that the Board may appoint a hearing officer to conduct hearings on rule changes.

AS 39.25.150. SCOPE OF THE RULES.

SB: Pg. 10 The committee substitute deletes the word "efficiently"
Line 4 from the language of paragraph (3). Testimony at the
 hearing on the bill suggested that it would be hard to
 create a system to measure whether an employee could be
CSSB: Pg 9 expected to efficiently discharge the duties of a job.
Line 18

SB: Pg 11
Line 19

CSSB: Pg 11
Line 4

The committee substitute redrafts language on veterans preference. It provides that the additional points awarded to a veteran may be used only once, at a time selected by the veteran. The present system permits the points to be added to all of the applications for job classes a veteran has applied for before he is employed by the state. The limitation against a veteran using his or her preference points to secure a promotion is retained. The committee substitute also adds that the paragraph may not be interpreted to amend terms of a collective bargaining agreement.

The committee substitute amends the definition of veteran and disabled veteran.

SB: Pg 13
Line 2

CSSB: Pg 12
Line 21

The committee substitute adds a new paragraph to provide for rules to guarantee a partially exempt or exempt employee whose job is placed in the classified service an opportunity for work in the same or similar job class.

AS 39.25.160. GENERALLY.

SB: Pg 14
Line 21

CSSB: Pg 14
Line 14

The committee substitute adds prohibitions against job action based on marital status, change in marital status, pregnancy, parenthood or other reasons not related to merit to the protected classes listed in the Senate Bill.

AS 39.25.170. HEARINGS AND APPEALS UPON DISMISSAL, DEMOTION, OR SUSPENSION.

SB: Pg 15
Line 16

The committee substitute adds the same protected classes listed in AS 39.25.160 into AS 39.25.170(c).

CSSB: Pg 15
Line 14

SB: Pg 16
Line 7

In paragraph (h) the committee substitute adds reference to an employee's right to confront and cross-examine

Memo to Members of the BRC
May 11, 1981
Page Four

CSSB: Pg 16
Line 7

witnesses and specifies that all testimony shall be taken under oath.

In paragraph (i) the committee substitute repeats the same additions to protected classes. In addition, it specifies that the Personnel Board shall report its findings and recommendations in writing within 30 days of a hearing. It also adds language to provide that the employee may appeal the decision of the Personnel Board to the superior court.

TBC:lmk
Enclosure

Lu
SB 193
4/9/81
mp
465-2200

April 8, 1981

Ms. Nancy Groszek
Administrative Assistant
Senate State Affairs Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Ms. Groszek:

Re: SB 193

This is to reiterate the concerns expressed by Bruce Cummings, Director of Personnel, before the Senate State Affairs Committee on March 31, regarding SB 193.

The Department of Administration is particularly concerned with the amendments to AS 39.25.140 proposed in Section 12 of the bill, which would require that certain amendments to the Personnel Rules are subject to the Administrative Procedure Act (AS 44.62). It is our opinion that the enactment of this proposal would simply limit the flexibility we now have to modify the Rules - while at the same time increasing the cost of their administration - without providing any substantive benefits to the State, its citizens, or its employees.

As you may be aware, the Legislature determined at the time of Statehood that the Personnel Rules "relate to the internal management of State agencies and their adoption is not subject to the Administrative Procedure Act." [AS 39.25.190(c)] We believe that this was a proper acknowledgement that the Division of Personnel exists only to provide services to other State agencies - as opposed to being a direct public service agency - and that the procedural rules for the management of the State's work force are properly an internal matter.

To exempt the Personnel Rules from the requirements of AS 44.62 does not suggest that the substance of the Rules is of no interest to the public. Indeed, existing statutes require that notice of proposed amendments be posted in public buildings throughout the State, that a thirty day waiting period elapse, and that the Personnel Board may hold hearings upon request [AS 39.25.140(c)]. These provisions insure that there is at least an opportunity for public input.

April 8, 1961

However, as a result of the enactment of collective bargaining for State employees in 1972, even the existing provisions for public comment are largely meaningless. To now require a costly procedure which would ostensibly provide for greater public comment is only to deceive the public; comments received as the result of amendments via the Administrative Procedure Act would have little or no substantive effect on the rules governing State employment.

The matters defined as "public policy" in the proposed subsection (f) for AS 39.25.140 are now matters on which the State negotiates with public employee organizations under AS 23.40. The agreements we reach supercede the Personnel Rules, and their terms vary among bargaining units. For example:

1. We recruit for classifications in some bargaining units, but in others we do not;
2. Hours of work vary between bargaining units;
3. We examine for positions in some bargaining units, but in others we do not;
4. Some bargaining units provide for merit increases, but others do not;
5. "Prohibitions and penalties" vary among bargaining units; and,
6. Hearing and appeal procedures differ between bargaining units.

In recent years, amendments to the Personnel Rules have become an after-the-fact reflection of employment conditions prevailing for most classified employees. Where the Rules differ from the terms of a collective bargaining agreement, the agreement prevails.

At this time, there are only thirteen out of State employees whose terms and conditions of employment are wholly subject to the Personnel Rules and AS 39.25 (three are in the Division of Personnel, and ten are in the Division of Labor Relations). These are classified employees who are not presently covered by a collective bargaining agreement. While we must continue to maintain Personnel Rules for this handful of employees, we do not believe that public interest is sufficient to subject those Rules to the Administrative Procedures Act.

April 8, 1981

Further, the proposed amendment to AS 39.25.140 may work to impair the collective bargaining process. AS 23.40.250(7) currently provides:

" 'terms and conditions of employment' means the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of a public employer."

It would appear that the proposed changes in AS 39.25.140 would conflict with AS 23.40.250(7) and thereby make those matters of "public policy" not subject to collective bargaining.

It was suggested in Committee hearing that this apparent conflict may be resolved by amending SB 193 to expressly provide that the Rules which would be subject to the Administrative Procedure Act are not matters of "public policy" for purposes of AS 23.40. Should this occur, we remain with the paradox of soliciting public comment on issues which have already been determined across the bargaining table.

Attached is a copy of our bill analysis of SB 193. We respectfully request that the changes recommended in Section 5 of the analysis be made. Should the Senate State Affairs Committee decide not to adopt these recommendations, we ask that they do adopt the attached fiscal note.

On another subject within SB 193, we recommend that Section 8 of the bill be expanded by adding the following:

- (19) Officers and employees of the State employed in positions in foreign countries.

Presently, these positions are in the partially exempt service. The Director of Personnel is required by AS 39.27.020(c) to establish equitable pay differentials for these positions, to be derived from the basic salary schedule provided in AS 39.27.011. To do so in an equitable manner is virtually impossible. There are several factors affecting the actual cost-of-living in foreign countries which cannot be adequately addressed in formulating a standard salary schedule. This reality is acknowledged by federal and private employers in that they do not tie overseas salaries directly to standard pay schedules. Placing these positions (there are currently only two) in the exempt service would enable the State to set compensation on a formula analagous to that used by the federal government.

Ms. Nancy Groszek
Page 4

April 8, 1981

Thank you for the opportunity to comment on SB 193. Should you desire additional information, please do not hesitate to ask.

Respectfully,

W. R. Hudson
Commissioner

WRH/mjc

cc: Keith Specking
Judy Crondahl

Bruce A. Cummings

Attachments: Bill Analysis - SB 193
Fiscal Note - SB 193

AMERICAN ASSOCIATION
ALASKA



OF UNIVERSITY WOMEN
DIVISION

April 1981

To: Members of the Senate State Affairs
From: Susan R. Clark, Legislative Chair, Alaska Division of the
American Association of University Women
1109 C Street, Juneau, Alaska 99801 (586-6952)

Re: Veterans' Preference for State Employment (SB 193, SB 104)

I would like to begin first with an acknowledgement to Sen. Bradley, because I know that his hard work in this area has been done in good faith and out of a sincere concern for the welfare of those men and women who made personal sacrifices for the sake of our country's safety.

I also want to point out that I personally grew up in the military. My father, godfather, and father-in-law were all career officers in the armed services, and my husband and brother were both active in the military during the Vietnam war. I had planned at one time to make the Navy a career. I also want to point out that the new Alaska division president of A.A.U.W. is herself a veteran.

A.A.U.W. feels that we must bring to the attention of the legislature that while the goals of preference are legitimate, and while the current state statute may not have been enacted for the purpose of discriminating against women, the exclusionary impact upon women is so severe as to require the state to further its goals through a more limited form of preference.

Looking at the current law as too broad, please consider who is covered: a person with a minimum of 90 (181 is a change currently being proposed) days active service serving during World War I, World War II, and Vietnam or Korea who has been honorably discharged. According to the Veterans' Preference Act of 1944, such preference was designed to reward veterans for the sacrifice of military service, to ease the transition from military to civilian life, to encourage patriotic service, and to attract loyal and well disciplined people to civil service occupations. In terms of the last reason, it should be pointed out that preference itself has little if any relevance to actual job performance. The first two reasons for preference seem the most pertinent to Alaska - reward for sacrifice and ease of transition into civilian life. Both reasons are valid, but as lifetime preferences, they are subject to the objection that they give the veteran more than a square deal. Certainly, upon returning to civilian status, a veteran should have access to his or her job, and perhaps for 5 years or so after returning, preference could be given as reward and help for veterans, but there should be some sort of limit on the length of time one can reap rewards for what can be a brief and un Hazardous term of service.

Because the extent to which the status of veteran is one that few women have been permitted to achieve, every hiring preference for veterans, however modest or extreme, must admit inherent gender-bias, and therefore legislated preference must be considered with due caution and careful consideration. The 5 points for veterans and 10 points for disabled veterans comes directly from the 1944 Federal Veterans' Preference Act. These points are added to a veteran's score after other written tests are administered. In Alaska where mere hundreths of a single point can separate job applicants, the system is overly weighted, especially when compared with other handicapped, disadvantaged or suspect classes of people.

Conceding that the goal here is to benefit the veteran, there is no reason to absolve the legislature from awareness that the means chosen to achieve this goal reserves a major sector of public employment to an already established class, which, as a matter of historical fact, is already 80% male in catagories other than the clerical and para-professional jobs. The current point system and lifetime preference, only compounds and contributes to sex bias in all levels of state employment.

Women have been overtly excluded from the military, and not just by tradition and culture. During WW I for example "a variety of proposals were made to enlist women for work in the Army as doctors, telephone operators, and clerks, but all were rejected by the War Dept." Navy women did achieve military rank and status during this time, and were the first women to do so. While the Army Nurse Corps was the first official military unit for women, they were not granted full military rank until 1944 - forty-three years later. During the Second World War several temporary women's units were formed including WAAC (Women's Army Auxiliary Corps), WAVES (Women Accepted for Voluntary Emergency Service), and WASP (Women Airforce Pilots). These women, however, were in fact civilians and had no regular military status, and thus no veteran status. In fact, although the WASP personnel were filling some of the most hazardous of flying jobs, that of towing targets for air gunnery practice, and testing planes fresh out of repair depots, they were denied commissions based on the fact that "the authority of the act of September 1941, to make temporary appointments as officers in the U.S. Army 'from among qualified persons' refers to and contemplates men exclusively, and may not be regarded as authority for commissioning women as officers...." These women finally won their hard earned veterans' status in September 1976, but other women who had been active in the war have not.

Women's services were finally established on a permanent basis in 1948, however quotas were placed on the numbers that could enlist. Women were not to exceed 2% of the total enlisted strength, their eligibility requirements were more stringent than were those for men, and career opportunities were also limited. In addition women were involuntarily removed from service for pregnancy, parenthood, and even marriage. These strictures have carried on into the '60's and '70's. Not until 1967 was the 2% quota lifted, and the many restrictive policies concerning women's participation in the military were not modified or eliminated until the 1970's. Amazingly, or perhaps not so, once the barriers were down women joined in large numbers.

In just three years from 1973-1975 the percentage of enlisted women in the military had doubled.

There are two ways to ameliorate the effects of the veterans' preference on women and minorities. One is to modify the point system and to place a time limit on preferential access to jobs. The other solution is to look to expanding what is considered by the word veteran, and thereby include in this law others who have served their country every bit as well and as patriotically as have those on "military active duty". Other states include language that recognizes nurses and other women who were discharged and so served in any "corps or unit of the United States established for the purpose of enabling women to serve with, or as auxiliary to, the armed forces of the United States..." Language should also recognize those who underwent severe hardship because of the war. In WW II both the Aleut Americans and the Japanese Americans were uprooted and forced into relocation camps. We have never rewarded their sacrifices with jobs or appeasements of any sort. In expanding the concept of who is a veteran, we need also to look at the men and women who served in civil defense jobs, with the American Red Cross, the Civil air patrol, as war correspondants, and in the merchant marine (who incidentally were in the same waters as navy destroyers and also under attack, but receive no reward in terms of their patriotism, personal sacrifice and danger).

Looking again at the contributions of women to the war effort, we are but slightly aware of the sacrifices and contributions of over 2 million World War II women who took the places of the absent men working in the American war industries: in shipyards, aircraft plants, ammunition plants. The call to "inlist" in the factories was every bit as organized and strong as for men in the armed forces. Concern about dangerous working conditions and long hours took a back seat to America's call to keep up the production to supply the war with weapons, and ammunition. For the short-handed women in the farm communities, the call was to get out the crops to feed the troops. If personal sacrifice, patriotism and danger is a standard for preference, then these women deserve veterans' status every bit as much as the service veterans. One amazing statistic of which you may be unaware is that during the war period "more deaths occurred from industrial accidents than from combat." Where was and is their reward? For their commitment and patriotism, they received not preferred lifetime access to civil service jobs, but firings. No one helped them with their transition back into "civilian" jobs. For many minority women who were even then the major financial support for their families, this transition meant leaving highly skilled, well paying jobs to go back to the dead end drudgery and poverty wages of domestic work.

It is interesting to note that the Federal Veterans' Preference Act of 1944 included in its preference the wives of disabled service personnel and the unmarried widows of deceased ex-service personnel. We tend to look at patriotic service and personal sacrifice as being a military male prerogative, but I feel we need to look hard at the patriotism and sacrifice of the service personnel spouses who held the country and family together as essentially single parents, frequently having to hold down another job to

support their families because the salary range for enlisted personnel in the military is so low that those families qualify for government assistance. Vietnam vets, in addition, currently have the highest divorce rate of any class of Americans. a rate that is generally high among all military personnel. This means, for example, that those women who held families together during the father's service, and who now must have full time employment to support themselves and their children (of whom women still usually have custody), who traditionally are not educated for well paying jobs, and who have traditionally been denied many levels of employment advancement, now in addition find that the men to whom they gave support are receiving preferential treatment in the jobs the women need to support their families.

As you can see, equitable expansion of the term veteran would be a formidable legislative task, but should be attempted so that families of veterans and those who served alongside veterans can be recognized. As it now stands, the Alaska statute exacts a substantial price from a group of individuals who have long been subject to employment discrimination, and who, because of circumstances totally beyond their control, have had little if any chance of becoming members of the preferred class. Admitting that any hiring preference for veterans does at this time have a severe impact on the public employment opportunities of women, we nevertheless recognize the sacrifice and hardship of military veterans must not be ignored. Through workable modifications in the law, we can strive together to discover solutions that recognize the needs, sacrifices, and contributions of both the military veteran groups and the groups of minorities and women which are so impacted by historical discrimination.

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JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

MEMORANDUM

March 31, 1981

TO: Members of the Senate State Affairs Committee

FROM: Teresa B. Cramer *TBC*
Administrative Assistant

SUBJECT: SB 193 - Amending the State Personnel Act

Senate Bill 193 makes a comprehensive revision of the State Personnel Act, to change personnel practices, to expand the protections granted employees in the exempt and partially exempt services, and to make the Act consistent with the Public Employment Relations Act. The major changes made in the bill are noted below:

Section 6. Amending AS 39.25.080. PUBLIC RECORDS.

This section amends the current law to provide that only those personnel records listed are available for public inspection. In fact, the materials listed are those which are presently made available under existing law for public inspection. The law now states that except for those materials made confidential by the Personnel Rules, state personnel records are public.

Section 8. Amending AS 39.25.110. EXEMPT SERVICE.

The bill deletes the material in the existing paragraph (8) which states that "certificated teachers employed by the state to teach in schools operated by the state" are in the exempt service. After being advised by the Personnel Office of the Department of Education that there were no employees of schools operated by the state, the commission deleted the paragraph. In fact, there are employees considered to fall within this group. They are employed as correspondence study teachers in Juneau and in the Alaska Skills Center in Seward. The commission has not had an opportunity to consider whether it wishes to change its initial action of deleting paragraph (8).

Section 9. Amending AS 39.25.120. PARTIALLY EXEMPT SERVICE.

Paragraph (19) of this section of the bill adds a group of employees to the partially exempt service who are presently members of the classified service but do not participate in collective bargaining. These are the employees of the Division of Labor Relations within the Department of Administration who are responsible for representing the state in collective bargaining. The majority of the commission recommends that these employees be placed in the partially exempt service in order to insure that they are directly responsive to the policies of the administration.

Section 12. Amending AS 39.25.140. AMENDMENT OF PERSONNEL RULES.

The bill proposes that those Personnel Rules which fall within areas of concern to the public be required to be adopted in accordance with the Administrative Procedures Act to insure an opportunity for public comment. All of the Personnel Rules are presently exempt from the requirements of the APA.

Section 13. Amending AS 39.25.150. SCOPE OF THE RULES.

Paragraph (16) of the bill no longer sets a limit of 30 days for disciplinary suspension.

Paragraph (17) of the bill provides that the Personnel Rules shall include procedures for resolving disputes from the general public.

Paragraph (23) of the bill is added to permit the adoption of Rules relating to special employment programs for the disadvantaged.

Section 14. Amending AS 39.25.153. PERSONNEL OFFICERS.

Subsection (a) provides that all personnel officers shall be employees of the department in which they serve.

Subsection (b) amends the powers granted to the personnel officers listed in the statute.

Section 15. Amending AS 39.25.160. GENERALLY.

Subsection (c) extends protection from being required to make contributions to a political party to all employees. The existing

Memo to Senate State Affairs Committee
March 31, 1981
Page Three

subsection applies only to those employed in the classified service.

Subsection (e) adds a requirement that members of the partially exempt service resign from state employment when seeking political office.

Subsection (f) extends protection from unlawful discrimination to all state employees, not merely to members of the classified service.

Section 17. Amending AS 39.25.170. HEARINGS AND APPEALS UPON DISMISSAL, DEMOTION, OR SUSPENSION.

Subsections (c) and (i) repeat the expanded coverage from unlawful discrimination which was granted in AS 39.25.160(f).

TBC:lmk



JUNEAU, ALASKA

TERESA ! EXPLAIN THE FACTS
Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

MEMORANDUM

March 27, 1981

TO: Senator Bill Ray, Chairman

FROM: Teresa B. Cramer *Terry*
Administrative Assistant

SUBJECT: SB 193 - Amending the State Personnel Act

I recently received a phone call concerning SB 193 which the commission is sponsoring. The inquiry concerned why the commission had deleted paragraph 8 of AS 39.25.110 (which is the section setting out the membership of the exempt service). The paragraph deleted places "certificated teachers employed by the state to teach in schools operated by the state" in the exempt service. At the time that the commission was considering this section I spoke with the Personnel Office of the Department of Education. They advised me that there were no longer any state operated schools and that therefore there were no employees who would fall within this paragraph. All of the teachers in rural schools are now covered by the paragraph pertaining to employees of regional educational attendance area school boards (AS 39.25.110(18)).

There are, contrary to the initial information I was given, certificated teachers who are considered to be employed by the state to teach in schools operated by the state. These teachers fall into two groups - those employed in the Correspondence Study section of the Department of Education in Juneau and those employed in the Alaska Skills Center in Seward. These teachers are placed in the exempt service by the language of AS 39.25.110(8). The commission did not act with the intention of placing them in the classified service when it deleted this paragraph. However, some of the commission members may believe that it is better to place these employees in the classified service, and therefore would oppose changing the bill.

What should I do concerning this in the State Affairs Committee hearing next Tuesday? Unless you recommend something else, I will explain the facts given above and say that the commission has not met to authorize proposing an amendment to the bill.

TBC:lmk

MEMORANDUM

February 11, 1981

TO: Linn Asper, Legal Services
Legislative Affairs Agency

FROM: Teresa B. Cramer
Administrative Assistant

SUBJECT: Amendments to the State Personnel Act (W.O. 120067)
Amendments to the Nepotism Bill (W.O. 0057)

The commission at its meeting today have suggested the following changes in the above two bills.

State Personnel Act

1. See my memorandum dated February 4, 1981. Do all the recommended changes with the exception of deleting the reference to the "chief of subsistence on page 6, lines 7-8.
2. Add a paragraph to AS 39.25.120 which states:

 (19) the director, deputy director, personnel analystsII, labor relations analystsI, labor relations analystsII, senior negotiators and the research directors of the Labor Relations Agency.
3. In AS 39.25.120(9), page 5, line 20 -- refer to the fact that the number of special assistants can be increased per AS 39.25.130.
4. In AS 39.25.150(17) change the word "citizen" to "members of the public" or some such phrase. "Citizen" excludes resident aliens.
5. Add Sec. 21 to include the effective date of July 1, 1981.

Nepotism Bill

In AS 39.10.010, page 1, line 14 delete "to, the person who makes the appointment or".

TBC:lmk

MEMORANDUM

January 23, 1981

TO: Linn Asper
Legal Services Division

FROM: Teresa B. Cramer
Administrative Assistant

SUBJECT: State Personnel Act Revisions

I want to start drafting the commission report to the Legislature and I thought I would do so anticipating that the amendments which we have talked about are adopted by the commission. Therefore, to insure that I know what I'm doing, I thought I'd check them with you.

If you have thought of any other amendments which I would need to set out in an analysis of what the commission is proposing, I'd appreciate knowing about them. Thanks.

Page 1 Add an amendment to AS 39.25.070(3) to delete reference
Lines 27 to classified employees, since partially exempt and exempt
& 28 employees are also granted appeal rights in some instances
by this draft.

Page 2 Add amendment to AS 39.25.090 (Coverage of Chapter) so that
lines 21 it reads something like:
& 22

"This chapter and the rules (should this be regulations?)
adopted under it apply to all positions in (1) the
classified service, and (2) the partially exempt and
exempt service as specifically provided."

Pages 4 See my earlier communication on AS 39.25.120
& 6

Page 8 Change to read: (1) - (8) of this subsection.
Line 14

Memorandum to Linn Asper
January 23, 1981
Page Two

Page 8 Change to read: tions;
Line 28

Page 17 Perhaps add an effective date clause - you don't need to
Line 15 anything about this until the commission says to, but
 I'll ask them if they want one.

TBC:lmk



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

MEMORANDUM

January 22, 1981

TO: Linn Asper, Legal Services Division
FROM: Teresa B. Cramer
Administrative Assistant *Jerry*
SUBJECT: AS 39.25.120

Because of changes made to AS 39.25.120 by Executive Order, I think we need to redraft that section for our bill. If you agree with the version below, I'll do a memo for the commission to accompany the materials I'll send out before the next meeting.

* Sec. 7. AS 39.25.120 is repealed and reenacted to read:

Sec. 39.25.120. PARTIALLY EXEMPT SERVICE. (a) Positions in the partially exempt service are included in the position classification plan established under this chapter and are compensated according to the pay plan (AS 39.27.011).

(b) A person holding a position in the partially exempt service is not required to take an examination or qualify or earn a place on a register, and is not eligible for a hearing by the personnel board in case of dismissal, demotion, or suspension, except as provided in AS 39.25.170. Positions in the partially exempt service are specifically exempt from the rules established under AS 39.25.150(3) - (10), (13), (14), and (17).

(c) The following positions in the state service constitute the partially exempt service:

(1) deputy and assistant commissioners of the principal departments of the executive branch, including the assistant adjutant general of the Department of Military Affairs;

(2) the directors of the major divisions of the principal departments of the executive branch and the regional directors of the Department of Transportation and Public Facilities;

(3) attorney members of the staff of the Department of Law and of the public defender agency;

(4) one private secretary for each head of a principal department in the executive branch;

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

(6) the executive director and deputy director of the Alaska Public Utilities Commission;

(7) the state forester in the Department of Natural Resources;

(8) the director, deputy director, staff legal counsel, and hearing officers of the Alaska Transportation Commission;

(9) not more than two special assistants to the commissioner of each of the principal departments of the executive branch;

(10) the principal executive officer of the following boards,
councils,
or commissions:

(A) Alaska Public Broadcasting Commission;

(B) Professional Teaching Practices Commission;

(C) Parole Board;

(D) Board of Nursing;

(E) Real Estate Commission;

(F) Alaska Royalty Oil and Gas Development Advisory

Board;

(G) Alaska Historical Commission;

(H) Alaska State Council on the Arts;

(I) Alaska Police Standards Council;

(J) Council on Science and Technology ~~in the Department~~
~~of Environmental Conservation;~~ *(The Gov. proposes to transfer it
to the D. of Admin.)*

(11) Alaska Pioneers' Home managers;

(12) hearing examiners in the Department of Revenue;

(13) the comptroller in the division of treasury, Department
of Revenue;

(14) investment officers in the Department of Revenue;

~~(15) the chief of subsistence in the Department of Fish and
Game;~~ *This is in existing statute & the Personnel Board has
placed it in the px service. Since they propose to make the chief a division
director - we don't need to clutter up the statute.*

(16) airport managers in the Department of Transportation and
Public Facilities employed at the Anchorage and Fairbanks International
Airports;

(17) the deputy director of the division of tourism and the
deputy director of the division of insurance in the Department of Com-
merce and Economic Development;

(18) the executive director and staff of the Alaska Public Offices
Commission.

TBC:lmk

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH D
JUNEAU, ALASKA 99811
Phone: 465-2500

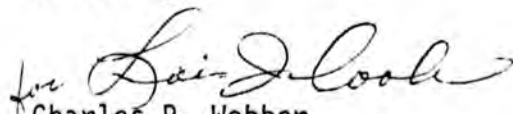
December 4, 1980

Ms. Teresa B. Cramer
Administrative Assistant
Blue Ribbon Commission
On the State Personnel Act
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811

Dear Ms. Cramer:

In response to your letter of November 24 regarding the deputy positions in the Divisions of Insurance and Tourism, I feel they should remain in the partially exempt service. A deputy of a division should serve at the pleasure of the director or commissioner since they are continually required to make decisions in the absence of the director and, in effect, are an extension of that position.

Sincerely,


Charles R. Webber
Acting Commissioner

CRW/mh4/1

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUPPORT BUILDING
JUNEAU, ALASKA 99801

December 3, 1980

Ms. Teresa B. Cramer
Administrative Assistant
Blue Ribbon Commission on the
State Personnel Act
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811

Dear Ms. Cramer:

In response to your recent letter regarding the partially exempt status of the Chief of Subsistence position, the Department has also been reviewing this position, but from a different perspective. The Subsistence Section which was established in 1978 as a new function within the Department of Fish and Game was a relatively small unit and therefore, we established the top position as a salary range 24 Section Chief. Due to the sensitive nature of the position and its impact on Departmental policy we requested and the Personnel Board approved, that the position be placed in the partially exempt service.

Recently the Department has been reviewing the role of the Subsistence Section in the Department and we have decided to change it from a Section to a Division with the top position being a range 26 Division Director. We feel this designation is more appropriate with the role this unit fills in the organization. The target date for this reorganization is January 1, 1981. At the same time we make this change in the Subsistence Section we will be doing the same in the Habitat Protection Section.

The Department's Personnel Officer, Mr. Fred Cook, will be available for questions on this matter at your December 4, 1980, meeting.

Sincerely,



for Ronald O. Skoog
Commissioner
(907) 465-4100

cc: Tom Lonner
Fred Cook



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

MEMORANDUM

December 3, 1980

TO: Members of the Blue Ribbon Commission

FROM: Teresa B. Cramer
Administrative Assistant *Teresa B. Cramer*

SUBJECT: Second Draft of Amendments to the State Personnel Act

Page 1 The second draft removes the phrase "or employees".
Line 18

Page 2 The commission suggested adding the phrase "For purposes of
Line 7 this Act". Legislative Affairs did not include it.

Page 2 The phrase "state employee" is used instead of "state officer
Lines 14-22 or employee".

Page 2 A new phrase is added to the beginning of this section:
Line 28 "Unless otherwise provided by law".

Page 5 Assistant commissioners are added to (1).
Line 7

Page 5 The phrase "administrative heads" is changed to "principal
Line 27 executive officer".

Page 6 Only the airport managers for Anchorage and Fairbanks are
Lines 15-16 placed in the partially exempt service.

Page 8 The subsection now requires that the amended rules be published
Line 6 in the Alaska Administrative Code.

Page 8 This amendment adds the approval of the personnel board, as is
Line 13 the case now.

Page 9 This is a new phrasing taken from the Model Personnel Admini-
Lines 4-6 stration Law. The old phrasing stated:

(3) the use of sound employee selection methods,
including open competitive examinations to test
the fitness of applicants for positions in the
state service;

Page 12 Subsection (a) is rephrased.
Lines 5-8

Page 12 The first phrase of the previous draft is omitted:
Line 9 "Notwithstanding the personnel rules adopted under
AS 39.25.150 and...."

Page 12 state pay plan
Line 17

Page 12 The second draft deletes paragraph (4)
Line 21

Page 12 The second draft changes "classes of employees" to classes
Line 22 of positions, which is the phrase used in subsection (b),
line 12.

Page 12 The second draft changes "commissioner of the department" to
Line 28 commissioner of administration.

Page 13 The second draft adds language to read "in connection with
Lines 7-8 making or securing an appointment.

The second draft adds language to read:

Page 13	
Line 11	from a <u>state</u> employee
Line 19	status of a <u>state</u> employee
Line 20	position in <u>state</u> service
Line 22	the basis of <u>unlawful</u> discrimination
Line 23	national origin <u>age</u> or <u>handicap</u>
Lines 24-28	Subsection (g) is new
Line 29	may not <u>knowingly</u> make

The second draft adds new language:

Page 14	
Line 5	may not <u>unlawfully</u> obstruct
Line 16	A <u>state</u> employee
Line 17	due to <u>unlawful</u> discrimination
Line 18	national origin, <u>age</u> , or <u>handicap</u>

Page 14	
Lines 20-22	The second draft adds a new subsection (d).
Lines 23-25	The second draft rephrases subsection (e).

The second draft adds new language:

Page 15	
Line 11	due to <u>unlawful</u> discrimination
Line 12	political beliefs, <u>age</u> , <u>handicap</u> , or in

Line 28	Section 17 is new. It provides definitions for:
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Page 16	
Lines 1-9	fraud
Lines 10-18	knowingly
Lines 19-20	precinct
Lines 21-24	state employee

**Alaska
Renewable
Resources
Corporation**

December 2, 1980

Box 1647
Juneau, Alaska
99802
(907) 465-4616

Alaska State Legislature
Blue Ribbon Commission on
the State Personnel Act
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811

Re: Concerning whether employees of the Alaska
Renewable Resources Corporation should be
placed in the classified service

Dear Commission Members:

Suite One
313 "E" Street
Anchorage, Alaska
99501
(907) 272-2500

Thank you for the opportunity to address the Commission on the question of whether employees of the Alaska Renewable Resources Corporation should be placed in the classified service. We are submitting this letter at the invitation of your staff instead of presenting testimony, since unfortunately our board members and president are unable to attend the meeting scheduled for December 4, 1980.



We understand that your inquiry as it pertains to ARRC is limited to the question of whether the employees of the corporation, as opposed to the board members, should be placed in the classified service; we will, however, address the status of the board members as well, in case our understanding is not correct.

As you know, members of the corporation's board of trustees are placed in the exempt service by virtue of AS 37.12.060. There is no feasible alternative to exempt status for board members in view of statutory provisions concerning the appointment, term of office and removal of board members. AS 37.12.030, .035 and .040. That last provision allows the removal of board members only for cause and with the consent of the legislature. The exempt status of the board members is entirely consistent with the legislative intent upon which the exempt service is founded; AS 39.25.110 provides exempt status for, among other positions, elected officials, judges and all employees of the judicial branch, commissioners, and members of "boards, commissions, or authorities."

The corporation's enabling legislation also provides that all of its employees are in the exempt service. AS 37.12.060. This is also consistent with the rationale underlying AS 39.25.110, which designates the groups of state employees which are in the exempt service.

Alaska
Renewable
Resources
Corporation

Alaska State Legislature
Blue Ribbon Commission on
the State Personnel Act
December 2, 1980
Page Two

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The basic thrust of the State Personnel Act is to distinguish between those state employees within the executive branch with similar terms and conditions of employment, and those state employees within both the executive branch and the other two branches of government whose terms and conditions of employment differ in one or more of a variety of ways. The most significant distinction between classified and exempt employees is the merit system principle which applies to classified, but not to exempt, employees. AS 39.25.010 states that the primary purpose of the Act is the establishment of "a system of personnel administration based upon the merit principle," in order to encourage "an effective career service." It is not likely that a "career service" will be, or should be, developed at ARRC, since every two years one of the three board members may be replaced. Due to this frequent change in the composition of the board, as well as to the small size of the board's staff, a career service is neither practical nor wise.

One other point based on the legal status of the corporation should be considered. The corporation, according to its enabling legislation, is "an instrumentality of the state," but it has "a legal existence independent of and separate from the state." AS 37.12.010. The Alaska Supreme Court has observed that one of the possible reasons the legislature provided for the legal separateness of this and similar corporations is to "insulate the state from potential liabilities." Alaska State Housing Authority v. Dixon, 496 P.2d 649, 651 (Alaska 1972). Placing the employees of the corporation under the State Personnel Act would be a first, and significant, step in eroding that legal insularity. There is no other public corporation in this or any other state with the responsibilities that have been placed upon ARRC by the legislature; in view of the legal uncertainties associated with the corporation's work, the arguments in favor of maintaining its separate legal identity are particularly compelling.

There are also strong practical arguments for preserving the exempt status of the corporation's employees. The sensitivity of material which comes under ARRC's control and the substantial sums of money requiring personal handling and

Alaska
Renewable
Resources
Corporation

Alaska State Legislature
Blue Ribbon Commission on
the State Personnel Act
December 2, 1980
Page Three

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superintendence creates a need to establish the most rigorous standards for employees, and the need to act immediately and without cavil when even the appearance of violation of those standards is in evidence. The corporation's very existence depends upon a high level of confidence on the part of potential applicants that confidential business information, trade secrets, inventions, processes, competitive material and the like are not disclosed or even referred to. The corporate executive must be able to act immediately and effectively even on the basis of suspicion, and without fear of the substance of the incident being debated in personnel actions.

We hope this letter is of assistance to you in your deliberations. If we can provide any more information, please do not hesitate to contact us.

Sincerely yours,

William E. Spear
Trustee

WES/bl



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

November 28, 1980

The Honorable Bill Ray
Chairman
Blue Ribbon Commission
on the State Personnel Act
Pouch AC
Juneau, Alaska 99811

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STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

November 26, 1980

SUBJECT: Redraft of the State Personnel Act
(Work Order Number 12-0067)

TO: Teresa Crammer, A.A.
Blue Ribbon Commission on the State
Personnel Act

FROM: Thomas A. Sofo
Legislative Counsel

I have tried to incorporate the revisions which have been suggested by the Blue Ribbon Commission and those contained in your memo of November 10, 1980. The Revisor of Statutes has also suggested a few other minor wording changes for the purposes of clarity and consistency. Linn Asper is due back in the office in the next several weeks, but if you have any questions concerning the language which has been incorporated into this most recent draft, please do not hesitate to contact me. I will try to help you to the best of my ability until Linn returns.

TAS:ljb

Enclosure

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATIVE SERVICES

OFFICE OF THE COMMISSIONER

10. GOVERNOR

99811

Back-up
BB 193
file
November 24, 1980

Honorable Bill Ray, Chairman
Blue Ribbon Commission on the
State Personnel Act
Pouch AG
Juneau, Alaska 99811

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This is a follow-up to my September 19 letter concerning recommendations I wish to make for improving our application processing system. Since writing to you in September, I have had extensive conversations with Fred Muller and Bruce Cummings about the problems we face in the application process and the solutions (both long and short-term) to those problems in areas where we control the process.

My recommendations at this time are as follows:

1. Automate to the fullest extent possible. As you may know, the existing processing system is a manual labor intensive operation. Each application accepted by the Division of Personnel is generally handled by at least six people prior to its ultimate disposition in the files (later, of course, it must be purged from the files). This manual processing system is substantively the same process used in the 1960's when we were a relatively small employer.

In analyzing the process, we find that a great deal of the application handling is for no purpose beyond recordkeeping and tracking while in process. It is extremely important (and legally required for the most part) to keep the records maintained by Personnel. However, we believe that there is considerable room to improve the tracking process by utilizing data processing systems.

To this end, the Division of Personnel has issued a Request for Proposals to automate the application processing system to the fullest extent possible within the next nine to ten months. What we envision -- and what we have requested -- is essentially a highly interactive on-line



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

November 28, 1980

The Honorable Bill Ray
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on the State Personnel Act
Pouch AC
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Warmest regards.

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Jerry Reinwand
Executive Assistant
to the Governor

STATE OF ALASKA THE LEGISLATURE

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November 24, 1980

recordkeeping system. Such a system would enable us to monitor the disposition of applications throughout the process, to produce reports identifying specific process problems (e.g., disparate impact on minority applicants) and to eliminate much of the manual recordkeeping. This system will not screen applications per se. However, it should provide for immediate entry, updating and retrieval of key information via CRT. In addition to simply storing data, the desired system should automate several features of the system; it should produce standardized letters, schedule testing, generate notices of examination results, and issue eligible lists upon request. We are hopeful that it will cut average processing time in half.

Our RFP calls for full implementation of an automated system by August 1, 1981. Frankly, our time frames may be unrealistic. However, similar systems already exist in a few other jurisdictions and we anticipate that a quick modification of systems already developed will give us a usable and expedient -- if not perfect -- system here.

To some extent we view this design as an intermediate system which may be modified in three to five years. Ultimately, an application system should be only one element in a large personnel data base system. In addition to the functions we envision in the system to be implemented, a comprehensive system might be able to at least partially machine score applications, score tests, compute employer credits, add veterans' points, record address changes from the payroll file, etc. To design such a system from scratch might take five years. We appreciate the need for speedy action and believe that we can address the larger issue of a data base system in coming fiscal years.

We anticipate awarding a design contract by mid-December. If you wish, I would be happy to advise you of the outcome from the RFP.

2. Increase delegation of recruitment and examination authority. The Division of Personnel is actively encouraging departments to assume authority for recruitment and examination of applications (and certification of eligibles in some cases) for all job classes which are unique to a given agency. By delegating this authority among the departments, more employees are made available to examine applications and agencies are given greater control over recruitment scheduling.

November 24, 1980

At this time, the delegation of recruitment and examining authority has been accepted only on a limited basis. Unfortunately, most departmental personnel offices are not adequately staffed to assume significant increase in workload. Nevertheless, we anticipate increased delegations in coming months.

The Division of Personnel has also assigned many more job classes to its Anchorage and Fairbanks offices for application processing. Although this has extended the turnaround time in those offices (now about four weeks), it has reduced the number of applications which would otherwise be processed in Juneau. It also provides applicants from those areas an opportunity to speak directly to the staff who process their applications.

I must note that while decentralization may be expedient, it can also be costly. Other agencies will undoubtedly seek additional staff to handle the workload delegated by Personnel. Additionally, each of them must develop their own recordkeeping systems to support the application process. We may ultimately find it more efficient to allocate all or a portion of those resources to the Division of Personnel.

3. Continued recruitment closures. Whenever the number of qualified applicants for a job class greatly exceeds the number of anticipated vacancies for the class, continuous recruitment should be closed. Although this practice may be undesirable to the candidate who cannot submit an application during a closed period, recruit closures simply make good business sense. To continue to solicit applications when there is no reasonable need is a disservice to the public; it slows the process by increasing the application flow and gives the candidate an illusion of prospective employment when there is no realistic probability of an employment offer.

However, we will open recruitment for almost every job class for at least thirty days in every twelve month period. This will ensure that candidates will have an opportunity to apply for classes at least once a year and that eligible lists will be updated with new candidates annually.

November 24, 1980

4. Consolidation of job classes. Every job class in the classified service (excepting those in the Labor, Trades and Crafts bargaining unit) requires some sort of examination device to screen applicants. The more job classes we have, the more examination devices we must use; consequently, the more complicated and time-consuming the application process becomes.

The Division of Personnel has a longstanding objective to eliminate unnecessary classifications whenever possible. As of November 1, 1980 we had 1,217 classes in the Executive Branch, for a ratio of one class for every 10.11 positions. Although this is the lowest ratio of classes to positions in State history (even a year ago the ratio was 1:8.22), we believe there is still considerable room for consolidation.

Parenthetically, consolidation of job classes should also greatly enhance the timeliness of classification actions.

5. Increased utilization of valid written examinations. The use of valid written examinations can greatly improve application processing. When a written examination is shown to be a statistically valid predictor of performance abilities in a given job, an applicant's previous training and experience can be considered moot; the results of the written examination may be used to determine the levels for which an individual is qualified within a class series. Taken to extremes, valid written tests can eliminate the need to screen even for minimum qualifications; any individual who applies is simply scheduled for the appropriate test.

Unfortunately, statistically valid written tests requires a large amount of time and money for their development. Further, with so many job classes, most of our classifications have so few employees working in them that we cannot get a sufficient sample size for acceptable validation. And, even when fully staffed, our Test Development and Validation unit consists of only three employees; at the most, they cannot reasonably do more than five validation studies per year. However, we will continue to develop valid written examinations as quickly as circumstances permit.

November 24, 1980

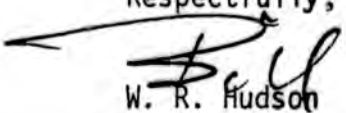
6. Develop multi-titled applications. In their last report, the Blue Ribbon Commission recommended that the Division of Personnel develop a system in which only one application is necessary from each applicant for each class series for which the applicant wishes to be considered. We are now attempting to do just that. In conjunction with the implementation of a new clerical testing battery which has just been developed, we plan to experiment with a multi-titled application for clerical classes (these account for 30-40% of our application flow).

It is our objective to have average application processing time reduced to ten working days or less by the end of FY 82 (current average processing time is twelve weeks). Undoubtedly, the foregoing recommendations are not the only actions which would improve the application process; the simplistic approach of throwing more staff at the work would "improve" the process, at least to the extent of reducing processing time. However, we prefer to emphasize these enhancements which will produce greater returns at lesser cost to the State.

To this end, I welcome any suggestions for improvement which may be made by the Commission.

Thank you again for the opportunity to comment.

Respectfully,



W. R. Hudson
Commissioner

WRH/mjc

cc: Frederick B. Muller
Deputy Commissioner for
Personnel Management

Bruce A. Cummings, Director
Division of Personnel

12/1

Bill Speer

None in town

Rev. Res Corp

Mickey, sec -

Do we have outline of differences

Running like private Co

Proprietary info

Act on suspicion of private
sensitive materials

Comp to Ct system

All deal w/ private sector

Val is good record as exec pt

for disciplinary purposes may suspend without pay a permanent classified employee for a period not to exceed thirty (30) days but no permanent employee in the classified service shall be dismissed, demoted or suspended for political, religious or racial or other nonmerit reasons.

(2) In case of a proposed dismissal, demotion or suspension, the appointing authority shall furnish the employee by registered mail, return receipt requested, a statement in writing specifically setting forth the reasons therefor. A copy of such statement shall be furnished to the director. This statement shall contain notice of the proposed dismissal, demotion or suspension and shall specify the effective date thereof. No dismissal, demotion or suspension shall become effective until after a reasonable opportunity has been given to the employee to respond in writing to or appear personally or both, before the appointing authority or his or her designee on the issue of dismissal, demotion or suspension. Except as otherwise provided in this section, a proposed suspension, demotion, or dismissal shall become effective no less than three calendar days nor more than ten (10) calendar days following receipt by the employee of the notice of such proposed suspension, demotion, or dismissal. If in the opinion of the appointing authority conditions warrant, the appointing authority may relieve the employee of or change the duties of the employee during such period. If the employee is relieved from duty during such period, the employee may be continued in pay status, or placed on leave of absence without pay by the appointing authority. The appointing authority shall offer the employee who is proposed to be suspended, demoted or dismissed an opportunity to reply in writing, or appear in person, or both, before the appointing authority or a designated representative of the appointing authority, on the issue of the proposed suspension, demotion, or dismissal prior to the time of such suspension, demotion, or dismissal as specified by the notice to become effective. This offer shall be in writing and delivered in the same manner as the notice of the proposed suspension, demotion, or dismissal. It shall specify the date, time, and place, by, or at which, the employee may reply in writing or appear, or both. A copy of such offer shall be sent to the director of personnel services. Upon request by the employee, the appointing authority, with the approval of the director of personnel services, may extend the time for reply or appearance, or both, if the circumstances warrant. The proposed suspension, demotion or dismissal shall not become effective until after the extended period has expired or the effective date given in the notice, whichever is later. The final notice of decision by the appointing authority or the designee of the appointing authority to suspend, demote or dismiss shall inform the employee of the employee's right to appeal the decision to the civil service board. At any time prior to the effective date of the proposed suspension, demotion, or dismissal or, if an appeal is taken to the state civil service board, at any time prior to the final decision of the civil service board, the appointing authority, with the approval of the employee and the director of personnel services, may withdraw or modify the action proposed to be taken or taken against the employee.

(3) Any employee finally dismissed, demoted or suspended may request in writing within thirty (30) days from after the effective date of the dismissal, demotion or suspension a hearing before the state civil service commission from the state civil service board to determine the reasonableness of such action and the commission board shall grant the employee a hearing within ~~forty-five~~ thirty (30) days after receipt of such request. At the hearing the burden of proof shall be upon the employee to establish that the appointing authority did not act reasonably in taking such action.

(4) After the hearing and consideration of the evidence for and against a demotion, the commission shall approve or disapprove such action and in the event of a disapproval the commission shall order in writing the reinstatement of the employee and

Phone conversations, Wednesday, December 3

Steven Cowper

He is the General Interim Counsel for the Alaska Energy Center. He advised that they will submit a written statement to the commission next week about how they expect to treat their employees

Walter Parker, of the Energy Center

The center is in the process of developing options on staffing. Their options are:

1. Remain in the exempt service
2. Establish their own PR's under the Energy Center charter as a corporation
3. Operate without rules entirely - this he did not recommend.

The energy center board is emphasizing the charter intent in the legislation that it be independent of the state but part of it - whatever that may mean.. They desire as much flexibility as the enabling legislation allows.

Ed O'Hare

He is taking over from Walt Parker. He was in Juneau last week and talked with Tom Farnana and Elaine O'Day about personnel matters. It appears that the Energy Center will go their own way - and not be part of the state personnel system for the present. It is possible for them to do this in their character as a private corporation. They can in future return to the exempt service of the state, but once they do so, they cannot get out. They will try, as they gain experience, to determine the needs and desires of their Alaskan employees and follow through later.

They have learned that they can take the major percentage of the employee's contributions on their benefits package and apply it later to the state benefits program if they elect to go into the exempt service. They will generally follow the state's salary schedule in order to ease a future transition in to the state service.

They don't have that many employees yet - about 20 by June and then add another 10 by the end of summer. They hope to plan the FY 1982 budget based on 30 employees. Much of the work will be done by subcontractors initially. All of these plans will be presented to the Energy Center board at their meeting on the 18th and 19th of December, so that's when things will be clearer.

Russ Clark from F&G called regarding the Chief of Subsistence. The dept is reorganizing and anticipates making Subsistence as well as Habitat sections into divisions, at which point the heads of those groups become division directors who are placed in the px service as a general matter and the problem goes away.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH D

JUNEAU, ALASKA 99811

Phone: 465-2500

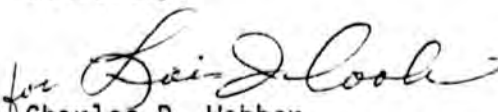
December 4, 1980

Ms. Teresa B. Cramer
Administrative Assistant
Blue Ribbon Commission
On the State Personnel Act
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811

Dear Ms. Cramer:

In response to your letter of November 24 regarding the deputy positions in the Divisions of Insurance and Tourism, I feel they should remain in the partially exempt service. A deputy of a division should serve at the pleasure of the director or commissioner since they are continually required to make decisions in the absence of the director and, in effect, are an extension of that position.

Sincerely,

for 
Charles R. Webber
Acting Commissioner

CRW/mh4/1

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

SUPPORT BUILDING
JUNEAU, ALASKA 99801

December 3, 1980

Ms. Teresa B. Cramer
Administrative Assistant
Blue Ribbon Commission on the
State Personnel Act
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811

Dear Ms. Cramer:

In response to your recent letter regarding the partially exempt status of the Chief of Subsistence position, the Department has also been reviewing this position, but from a different perspective. The Subsistence Section which was established in 1978 as a new function within the Department of Fish and Game was a relatively small unit and therefore, we established the top position as a salary range 24 Section Chief. Due to the sensitive nature of the position and its impact on Departmental policy we requested and the Personnel Board approved, that the position be placed in the partially exempt service.

Recently the Department has been reviewing the role of the Subsistence Section in the Department and we have decided to change it from a Section to a Division with the top position being a range 26 Division Director. We feel this designation is more appropriate with the role this unit fills in the organization. The target date for this reorganization is January 1, 1981. At the same time we make this change in the Subsistence Section we will be doing the same in the Habitat Protection Section.

The Department's Personnel Officer, Mr. Fred Cook, will be available for questions on this matter at your December 4, 1980, meeting.

Sincerely,



for Ronald O. Skoog
Commissioner
(907) 465-4100

cc: Tom Lonner
Fred Cook



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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**ALASKA INDUSTRIAL
DEVELOPMENT AUTHORITY**

601 WEST FIFTH AVENUE, SUITE 430
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 274-1651

October 28, 1980

Teresa B. Cramer
Blue Ribbon Commission on State Personnel Act
Pouch AG
Juneau, Alaska 99811

Dear Ms. Cramer:

This is in reply to your letter of October 22, 1980 inquiring as to whether or not it was necessary for employees of the Alaska Industrial Development Authority to remain in the exempt service.

The Alaska Industrial Development Authority is established as a public corporation of the state and a body corporate and politic constituting a political subdivision within the Department of Commerce and Economic Development, but with separate and independent legal existence (Sec. 44.61.020). As you may know, the Authority is charged with the responsibility of importing funds through sale of tax exempt bonds. In order to insure that the liabilities of this corporation do not pass through to the state, it is essential that a separate organization be created. Any action, which by construction, can infer that the State of Alaska rather than an independent agency thereof, is an issuer of bonds, can create a situation whereby the state is not insulated from the liability or liabilities of the Authority.

I believe it is essential that the employees of Alaska Industrial Development Authority remain in the exempt category. This will insure the separation of the Authority from the State of Alaska and thus continue to keep the state insulated from the debt characteristics of this Authority.

Sincerely,


David A. Rose
Executive Director

November 28, 1980

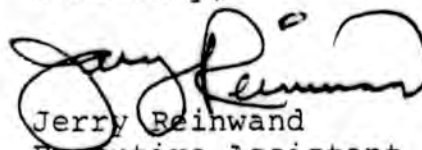
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Jerry Reinwand
Executive Assistant
to the Governor

Mike Morgan
11/3/88

~~the~~ disabled / Voc Rehab

use std classif from fed law - lists # of conditions/
disab: blind, deaf 4 - 2 plegia
severe cardiac

part b: combination of factors → severe in total

Its std they use

Other part: from VR perspective: disab^{rec.} ≠ qualify
enough

eg st admin job, educ, whistory. severe auto acc,
lost both legs prob ≠ sev. handic -
cd go back to same job
perhaps w/ course for emot. trauma

eg. fisherman in same sit = sev hand
bc diff bkgnd

placing 30-35/yr. NOT ONE FAILURE - in state emp't per
3500 ppl/yr - process failure SPA

inelig - wab re

have ± 2000 in process ref/ap/eval/train/placement

close ± 500/yr succes. rehab - op in emp't for min
of 60 days. Have follow along serv

state progr last yr that new law made impact

st in many ways most reluc ER

HSS coming
educ
some things don't talk

SUMMARY OF RECOMMENDATIONS

The Blue Ribbon Commission on the State Personnel Act recommends that:

1. The merit principles identified during the state constitutional debates should be specifically set forth in the State Personnel Act. These principles are fundamental to fair employment and should be recognized and adopted. (Page 11)
2. If any positions are removed from collective bargaining units, that they remain in the classified service but be prohibited from collective bargaining activity. (Page 15)
3. The legislature should re-examine the placement of positions in the exempt and partially exempt services. Where necessary, statutes should be amended to correct any errors identified. (Page 17)
4. If the legislature wishes to increase its role in the collective bargaining process, it do so by formally considering and approving or rejecting the agreements entered into between the bargaining units and the employer before they take effect. The agreements would be presented to the legislature by a specified date. The legislature would then be required to consider and act on the agreements within 30 days. The law should state that the legislature could not adjourn before having acted. If the agreements were ratified by the legislature, they would become binding contracts. (Page 18)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

POUCH C

JUNEAU, ALASKA 99811

465-2200

November 24, 1980

Honorable Bill Ray, Chairman
Blue Ribbon Commission on the
State Personnel Act
Pouch AG
Juneau, Alaska 99811

Dear Senator Ray:

This is a follow-up to my September 19 letter concerning recommendations I wish to make for improving our application processing system. Since writing to you in September, I have had extensive conversations with Fred Muller and Bruce Cummings about the problems we face in the application process and the solutions (both long and short-term) to those problems in areas where we control the process.

My recommendations at this time are as follows:

1. Automate to the fullest extent possible. As you may know, the existing processing system is a manual labor intensive operation. Each application accepted by the Division of Personnel is generally handled by at least six people prior to its ultimate disposition in the files (later, of course, it must be purged from the files). This manual processing system is substantively the same process used in the 1960's when we were a relatively small employer.

In analyzing the process, we find that a great deal of the application handling is for no purpose beyond recordkeeping and tracking while in process. It is extremely important (and legally required for the most part) to keep the records maintained by Personnel. However, we believe that there is considerable room to improve the tracking process by utilizing data processing systems.

To this end, the Division of Personnel has issued a Request for Proposals to automate the application processing system to the fullest extent possible within the next nine to ten months. What we envision -- and what we have requested -- is essentially a highly interactive on-line

November 24, 1980

recordkeeping system. Such a system would enable us to monitor the disposition of applications throughout the process, to produce reports identifying specific process problems (e.g., disparate impact on minority applicants) and to eliminate much of the manual recordkeeping. This system will not screen applications per se. However, it should provide for immediate entry, updating and retrieval of key information via CRT. In addition to simply storing data, the desired system should automate several features of the system; it should produce standardized letters, schedule testing, generate notices of examination results, and issue eligible lists upon request. We are hopeful that it will cut average processing time in half.

Our RFP calls for full implementation of an automated system by August 1, 1981. Frankly, our time frames may be unrealistic. However, similar systems already exist in a few other jurisdictions and we anticipate that a quick modification of systems already developed will give us a usable and expedient -- if not perfect -- system here.

To some extent we view this design as an intermediate system which may be modified in three to five years. Ultimately, an application system should be only one element in a large personnel data base system. In addition to the functions we envision in the system to be implemented, a comprehensive system might be able to at least partially machine score applications, score tests, compute employer credits, add veterans' points, record address changes from the payroll file, etc. To design such a system from scratch might take five years. We appreciate the need for speedy action and believe that we can address the larger issue of a data base system in coming fiscal years.

We anticipate awarding a design contract by mid-December. If you wish, I would be happy to advise you of the outcome from the RFP.

2. Increase delegation of recruitment and examination authority. The Division of Personnel is actively encouraging departments to assume authority for recruitment and examination of applications (and certification of eligibles in some cases) for all job classes which are unique to a given agency. By delegating this authority among the departments, more employees are made available to examine applications and agencies are given greater control over recruitment scheduling.

November 24, 1980

At this time, the delegation of recruitment and examining authority has been accepted only on a limited basis. Unfortunately, most departmental personnel offices are not adequately staffed to assume significant increase in workload. Nevertheless, we anticipate increased delegations in coming months.

The Division of Personnel has also assigned many more job classes to its Anchorage and Fairbanks offices for application processing. Although this has extended the turnaround time in those offices (now about four weeks), it has reduced the number of applications which would otherwise be processed in Juneau. It also provides applicants from those areas an opportunity to speak directly to the staff who process their applications.

I must note that while decentralization may be expedient, it can also be costly. Other agencies will undoubtedly seek additional staff to handle the workload delegated by Personnel. Additionally, each of them must develop their own recordkeeping systems to support the application process. We may ultimately find it more efficient to allocate all or a portion of those resources to the Division of Personnel.

3. Continued recruitment closures. Whenever the number of qualified applicants for a job class greatly exceeds the number of anticipated vacancies for the class, continuous recruitment should be closed. Although this practice may be undesirable to the candidate who cannot submit an application during a closed period, recruit closures simply make good business sense. To continue to solicit applications when there is no reasonable need is a disservice to the public; it slows the process by increasing the application flow and gives the candidate an illusion of prospective employment when there is no realistic probability of an employment offer.

However, we will open recruitment for almost every job class for at least thirty days in every twelve month period. This will ensure that candidates will have an opportunity to apply for classes at least once a year and that eligible lists will be updated with new candidates annually.

November 24, 1980

4. Consolidation of job classes. Every job class in the classified service (excepting those in the Labor, Trades and Crafts bargaining unit) requires some sort of examination device to screen applicants. The more job classes we have, the more examination devices we must use; consequently, the more complicated and time-consuming the application process becomes.

The Division of Personnel has a longstanding objective to eliminate unnecessary classifications whenever possible. As of November 1, 1980 we had 1,217 classes in the Executive Branch, for a ratio of one class for every 10.11 positions. Although this is the lowest ratio of classes to positions in State history (even a year ago the ratio was 1:8.22), we believe there is still considerable room for consolidation.

Parenthetically, consolidation of job classes should also greatly enhance the timeliness of classification actions.

5. Increased utilization of valid written examinations. The use of valid written examinations can greatly improve application processing. When a written examination is shown to be a statistically valid predictor of performance abilities in a given job, an applicant's previous training and experience can be considered moot; the results of the written examination may be used to determine the levels for which an individual is qualified within a class series. Taken to extremes, valid written tests can eliminate the need to screen even for minimum qualifications; any individual who applies is simply scheduled for the appropriate test.

Unfortunately, statistically valid written tests requires a large amount of time and money for their development. Further, with so many job classes, most of our classifications have so few employees working in them that we cannot get a sufficient sample size for acceptable validation. And, even when fully staffed, our Test Development and Validation unit consists of only three employees; at the most, they cannot reasonably do more than five validation studies per year. However, we will continue to develop valid written examinations as quickly as circumstances permit.

November 24, 1980

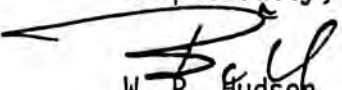
6. Develop multi-titled applications. In their last report, the Blue Ribbon Commission recommended that the Division of Personnel develop a system in which only one application is necessary from each applicant for each class series for which the applicant wishes to be considered. We are now attempting to do just that. In conjunction with the implementation of a new clerical testing battery which has just been developed, we plan to experiment with a multi-titled application for clerical classes (these account for 30-40% of our application flow).

It is our objective to have average application processing time reduced to ten working days or less by the end of FY 82 (current average processing time is twelve weeks). Undoubtedly, the foregoing recommendations are not the only actions which would improve the application process; the simplistic approach of throwing more staff at the work would "improve" the process, at least to the extent of reducing processing time. However, we prefer to emphasize these enhancements which will produce greater returns at lesser cost to the State.

To this end, I welcome any suggestions for improvement which may be made by the Commission.

Thank you again for the opportunity to comment.

Respectfully,



W. R. Hudson
Commissioner

WRH/mjc

cc: Frederick B. Muller
Deputy Commissioner for
Personnel Management

Bruce A. Cummings, Director
Division of Personnel

MEMORANDUM

November 10, 1980

TO: Legislative Affairs Agency, Legal Division

FROM: Teresa B. Cramer
Administrative Assistant

SUBJECT: Redraft of the State Personnel Act
WO 12-0067, Asper

At its last meeting, the Blue Ribbon Commission reviewed the redraft of the State Personnel Act and agreed on some changes. Please incorporate these changes into a second work draft to be reviewed by the Commission sometime at the end of November or the beginning of December.

I have noted the changes on the enclosed copy of the first draft. Some are explained in the enclosed copy of the Minutes and others are explained below. If there are problems with the language suggested, please make any corrections necessary.

If I can assist in any way, please let me know.

PROPOSED CHANGES TO THE STATE PERSONNEL ACT

Page 8 I am working with Senator Ray on what distinction the
Lines 5- commission wants to make between matters of public policy and
19 matters relating to the internal management of state agencies.
I will let the bill drafter know of how this is resolved as soon as possible.

Page 9 (3) the use of employee selection methods which will
Line 18 fairly test the capacity, and fitness of the persons examined to efficiently discharge the duties of the class in which employment is sought;

Page 10 Change the comma to a semi-colon
Line 21

Page 14 ADD NEW SUBSECTION:
Line 10

(g) Action affecting the employment status of an employee in the classified service or an applicant for a position in the classified service, including appointment, promotion, demotion, suspension, or removal, may not be taken or withheld on the basis of unlawful discrimination due to political beliefs.

Page 15 (d) An employee in the classified service who has been
Line 1 dismissed, demoted, or suspended due to unlawful discrimination based on political beliefs may appeal the action to the personnel board.

Page 15 A question: Given the changes with respect to protection
Line 18 against various kinds of discrimination, do there need to be two subsections concerning what happens if the personnel board finds there was unlawful discrimination, or can it all be lumped together in one subsection?

Page 17 The commission requested definitions of knowingly (take
Line 6 from the Criminal Code), fraud, local precinct level (take from the Election Code perhaps). I have added a request for a definition of state employee, but perhaps that is not necessary.

On the question of state employee, I had spoken with Linn Asper before he left concerning whether the phrase "state officer or employee" would include anyone not included in the phrase "state employee". It was his belief that it would not, but I have thought about that since the commission meeting, and it occurs to me that people appointed to boards and commissions who are not paid employees might be state officers, as might legislators and other elected officials. If this is so, then no change should be made in AS 39.25.060(b), page 1, line 18 nor should any change be made in AS 39.25.080, page 2, lines 14, 16 17, 20-21, 22, and 24.

Suggested definition of "state employee". "State employee" means any person in state service who is paid a salary or wage, whether in the classified, partially exempt or exempt service.

TBC:lmk
Enclosures



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

MEMORANDUM

November 4, 1980

TO: Members of the Blue Ribbon Commission on the State
Personnel Act

FROM: Teresa B. Cramer *TBC*
Administrative Assistant

SUBJECT: Standards for "severely handicapped"

At the last commission meeting, a question was raised concerning whether the definition of the term "severely handicapped" in the State Personnel Act should be changed. It is found in AS 39.25.150(22) which permits the granting of employment preference for the severely handicapped. The definition reads:

"Severely handicapped means persons certified by the director of the division of vocational rehabilitation to be severely handicapped."

I spoke with Mike Morgan, the director of the division, about whether a more complete definition of the term should be included in the Act. He explained that certifying a person as severely handicapped is a two-step process. The first step considers whether the individual has a physical disability which seriously impairs him. The list of conditions includes blindness, deafness, quadraplegia and paraplegia as well as severe cardiac problems. In addition, the first step may be met if a person has a combination of physical disabilities which, when added together, severely limit the possibilities open to him.

The second step evaluation is more subjective. The division considers whether, given the individual's background and training, the physical impairments seriously constrict his ability to find employment. Mr. Morgan suggested the following example. Assume an individual holds a state administrative job and has an extensive educational background and a good work history in his present employment. He is involved in a serious automobile accident and loses both his legs. While he would meet the physical test for being severely handicapped, he would probably

Memo to All Members of BRC
November 4, 1980
Page Two

not, in fact, have any difficulty retaining his present position. The division would offer him counseling services to help him come to terms with the emotional trauma, but he would probably not need any employment assistance. However, if you change the background of the individual in the example to a fisherman who does not have the education to take on a desk job immediately, then you do have someone who will need considerable assistance in finding employment. That person should be considered severely handicapped.

Because of the subjective part of the evaluation, Mr. Morgan recommends that the definition in the State Personnel Act remain as it is.

TBC:lmk

**ALASKA INDUSTRIAL
DEVELOPMENT AUTHORITY**

601 WEST FIFTH AVENUE, SUITE 430
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 274-1651

October 28, 1980

Teresa B. Cramer
Blue Ribbon Commission on State Personnel Act
Pouch AG
Juneau, Alaska 99811

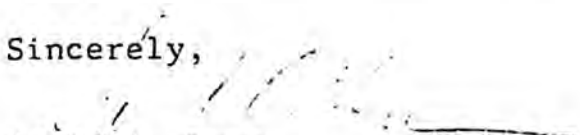
Dear Ms. Cramer:

This is in reply to your letter of October 22, 1980 inquiring as to whether or not it was necessary for employees of the Alaska Industrial Development Authority to remain in the exempt service.

The Alaska Industrial Development Authority is established as a public corporation of the state and a body corporate and politic constituting a political subdivision within the Department of Commerce and Economic Development, but with separate and independent legal existence (Sec. 44.61.020). As you may know, the Authority is charged with the responsibility of importing funds through sale of tax exempt bonds. In order to insure that the liabilities of this corporation do not pass through to the state, it is essential that a separate organization be created. Any action, which by construction, can infer that the State of Alaska rather than an independent agency thereof, is an issuer of bonds, can create a situation whereby the state is not insulated from the liability or liabilities of the Authority.

I believe it is essential that the employees of Alaska Industrial Development Authority remain in the exempt category. This will insure the separation of the Authority from the State of Alaska and thus continue to keep the state insulated from the debt characteristics of this Authority.

Sincerely,


David A. Rose
Executive Director



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

MEMORANDUM

October 14, 1980

TO: Members of the Blue Ribbon Commission on the State
Personnel Act

FROM: Teresa B. Cramer *IBC*
Administrative Assistant

SUBJECT: Commentary on Work Draft of the State Personnel Act

Page 1 Section 1. AS 39.25.040. Director of Personnel.
Line 8

There is one minor change proposed in line 14 to improve it stylistically. The content is not affected.

Page 1 Section 2. AS 39.25.060(b). Personnel Board.
Line 16

As discussed at the last Commission meeting, the requirement that members of the Personnel Board be qualified electors of the state is deleted by the amendment proposed here.

Page 1 Section 3. AS 39.25.070(1). Powers and Duties of the Personnel
Line 21 Board.

This amendment makes stylistic changes. All of the substantive requirements for how the Rules are to be amended are relocated to AS 39.25.140.

Page 1 Section 4. AS 39.25.070(6). Powers and Duties of the Personnel
Line 28 Board.

The amendment to this section identifies AS 39.25.170 as the section of the State Personnel Act which provides for hearings.

Page 2 Section 5. AS 39.25.070. Powers and Duties of the Personnel
Line 3 Board.

This is a new subsection which the commission had discussed some months ago. It provides statutory authority for the Personnel Board to hire employees and, in this draft, requires that the employees be

members of the classified service. The Commission in its previous discussions had not decided whether the employees should be members of the exempt service or the classified. If this subsection remains in the draft, the Commission may wish to consider whether the statute should specify which service Personnel Board employees shall be in.

Page 2
Line 6

Section 6. AS 39.25.080. Public Records.

The existing statute makes personnel records open to the public unless specifically designated as confidential by the Personnel Rules. This amendment changes the approach so that the state personnel records are confidential unless included in the list made public by this section of the statutes. In lines 8 and 9 the phrase "are confidential and are not open to public inspection" is used to insure that other state employees can consult personnel records when there is a valid reason.

In subsection (b), lines 14-23, reference to state employees should be a consistent phrase. Subsection (4) now says only "state employee" while the other subsections say "state officer or employee". Linn Asper, the drafter, recommends that all of the references be changed to "state employee". Whichever phrase is used in subsection (b) should also be used in subsection (c).

The materials which are made public records by this section are those which the Personnel Rules now identify as public records.

Page 2
Line 29

Section 7. AS 39.25.110. Exempt Service.

Subsection (a) of this draft sets out standards for positions which should be in exempt service. The Legal Division of the Legislative Affairs Agency has some concerns about this whole subsection which are stated in the memo from Linn Asper.

Subsection (b) sets out those positions which are placed in the exempt service by the State Personnel Act. The draft does not add any new positions to the exempt service. It seeks to eliminate redundant or obsolete paragraphs. Subsection (11), page 4, line 12, identifies the boards, commissions and authorities whose employees and officers are presently in the exempt service by statute. If the Commission recommends a change in the status of the employees of any of these entities, then this paragraph should be changed. Paragraph (12) states that the executive officer of the Postsecondary Education Commission is in the exempt service, which is consistent with the phrasing of the present statute. In fact, the executive officer and all of the employees are in the exempt service. If the Commission does not recommend a change in the present allocation, then paragraph (12) should be deleted and the Alaska Commission on Postsecondary Education should become subparagraph (F) of paragraph (11).

Subsection (18) places marine transportation employees in the exempt service. The Commission requested a letter from Greg O'Claray on the question of whether it would be more appropriate to place these state employees in the classified service.

Page 5
Line 19

Section 8. AS 39.25.120. Partially Exempt Service.

Subsections (a) and (b) of the draft are derived from the first part of the existing statute. Although the draft changes the reference to the subsections of AS 39.25.150 from which employees in the partially exempt service are exempt, the exemptions are not substantively changed. The reference in the existing statute to other sections of the Act is deleted, but partially exempt employees remain exempt from those sections.

Subsection (c) lists the positions placed in the partially exempt service. Paragraphs (1)-(8) and part of (17) encompass the existing language although in some instances the phrasing is changed. Paragraphs (9)-(16) and the rest of (17) are added to include in the statute those positions which are identified as in the partially exempt service by the Commission memo on the subject. I have set them out for purposes of discussion. The Commission may decide that placing some or all of these positions in the partially exempt service by statute is undesirable since it limits flexibility. The Personnel Board has the authority to add or delete positions in the partially exempt service.

Page 7
Lines 5
& 17

Sections 9 and 10. AS 39.25.130(a) and (c). Extension of Partially Exempt and Classified Services.

The draft removes the reference to dates which the existing language has. The substance of the Personnel Board's authority is not changed.

Page 7
Line 22

Section 11. AS 39.25.140. Amendment of Personnel Rules.

The draft sets out two methods for amendment of the Personnel Rules, depending on whether they are matters of internal management or of public policy. The Legal Division of the Legislative Affairs Agency raises questions concerning the distinction between these two areas in the memo from Linn Asper.

The draft requires that for Rules concerning matters of public policy the Administrative Procedures Act must be followed. For Rules concerning internal management, the existing system is set out with some modification. The time limits in subsection (e), page 8, line 8, were transferred from AS 39.25.070. The existing statute states that the Rules become effective 30 days after submission to the Personnel Board rather than 45 days.

The draft states in subsection (e)(2), page 8, line 14, that the Personnel Board may hold public hearings if requested. The wording should be changed to shall if the Commission wishes to limit the Board's discretion about whether to hold hearings.

In subsection (e), I inadvertently added paragraph (3), page 8, line 16, which gives the Personnel Board the power to amend the Rules proposed to it. This is a power which is granted to the comparable body in the Model Personnel Administration Law, but which Alaska has not granted to the Personnel Board. Unless the Commission wishes to extend the authority of the Personnel Board, this paragraph should be deleted.

Subsection (d) of the statute, which states that the Rules may provide for exemptions and modifications necessary to assure federal grants, is deleted. There is no need to spell out this power, since nothing prohibits it.

Page 8
Line 22

Section 12. AS 39.25.150. Scope of the Rules.

As presently set out, this section of the Act does more than list the items which the Rules shall contain. It includes some substantive provisions, such as the sections on veteran's preference, on the classification plan and on the pay plan, which might be more appropriately set out as separate sections. This draft follows the state's traditional structure and also the structure suggested in the Model Personnel Administration Law, so there are reasons not to change it as well as reasons to change it.

In general, this section has not been significantly changed in the draft. The order of some subsections was changed for the sake of clarity, and subsections (1) and (20) were restructured to make their content easier to discover.

In subsection (2), page 9, lines 16-17, reference to collective bargaining agreements was added.

The existing subsections (8) and (9), concerning nonpermanent and emergency appointments were combined in subsection (8) of the draft, page 10, line 9, since AS 39.25.195 - 200 sets out requirements for both kinds of appointments.

Subsection (16) of the draft, page 10, lines 26-27, is a rephrasing of the existing subsection (17).

As mentioned earlier, subsection (20) has been restructured. Its content is unchanged.

Subsection (23), page 12, line 10, is a proposed addition taken from language found in the Model Personnel Administration Act (Section 3, paragraph (9)). The Commission should consider whether to leave this language in the bill or remove it.

All of the other sections of the bill are to be found in the Act, although the order is changed.

Page 12
Line 18

Section 13. AS 39.25.153. Personnel Officers.

The draft changes both the structure and some of the content of the existing statute. Subsection (a) of the draft provides that each of the principal departments of the executive branch shall have a personnel officer, rather than limiting the reference to the named departments.

Subsection (b) of the draft provides that the personnel officers for those departments named in the existing statute shall have the powers set out in paragraphs (1)-(4). The existing statute gives the personnel officers the power to amend the Personnel Rules covering a number of topics. In the draft I have tried to identify more specifically the areas in which it may be desirable to give departmental personnel officers authority to act independently of the Personnel Division.

Subsection (c) of the draft takes language presently placed in subsection (b) and moves it to a separate subsection. Subsection (d) of the draft is new language.

The Commission may wish to consider granting the powers provided in Subsection (b) to all personnel officers. On the other hand, the Commission may decide that the authority which the Director of Personnel has to delegate his powers provides sufficient opportunity for the departmental personnel officers to work on unique job classes separate from the Division of Personnel. If this is the Commission's decision the subsections (b)-(d) should be deleted.

Page 13
Line 14

Section 14. AS 39.25.160. Generally.

The first subsection of the existing statute has been removed from this section and placed in a new section, AS 39.25.192. It grants rights to state employees rather than addressing prohibitions. The remaining subsections of the existing statute have been relettered and rewritten for clarity. The only substantive change in the draft is to add, in subsection (3), page 14, line 2, a requirement that partially exempt employees resign their positions when they seek nomination or become a candidate for state or national elective political office.

Subsection (f) includes prohibitions against acting on the basis of sex, color, and national origin as well as on the basis of race, religion or political beliefs to make the statute conform to the scope of the Personnel Rules and to constitutional requirements.

Page 14 Section 15. AS 39.25.170. Hearings and Appeals Upon Dismissal,
Line 20 Demotion, or Suspension.

This section has been restructured and its contents revised to conform to court rulings on the right to hearings. Subsection (a) follows the present statute and requires that the appointing authority who is dismissing, demoting or suspending an employee must give written notice of the proposed action and the reasons for it.

Subsections (b)-(e) set out those classes of employees who presently, by statute or by case law, have a right to appeal. There is a drafting error in subsection (c), page 14, line 27. The phrase "in the classified service" should be deleted, since partially exempt employees may now appeal if the action is based on those prohibited reasons.

Subsection (f), page 15, line 9, makes clear how an employee commences an appeal.

Subsection (g) follows existing language but clarifies the employee's right to decide whether the hearing shall be open or closed to the public. The draft also clarifies that the employee's representative need not be an attorney, that the employee has the right to present evidence and that the technical rules of evidence do not apply.

Subsection (h) follows the existing language of the Personnel Rules, which are based on the statute, but include provisions required by case law. Personnel Rule 12 01.22.

Page 15 Section 16. AS 39.25.175. Subpoenas.
Line 25

The Personnel Board is granted the power to subpoena witnesses and documents in the existing AS 39.25.070(6). For clarity, this power is set out following the section on hearings in the draft. In addition, the authority of the Personnel Board is clarified, and the draft adds that if a witness refuses to comply, the Board may apply to the Superior Court for an order requiring the person to respond.

Page 16 Section 17. AS 39.25.185. Employment of Federal Employees.
Line 6

The substance of this new section is taken from the Personnel Rules which are based on AS 39.25.180. It is a rarely used provision, and the

Commission may wish to consider whether it is necessary or desirable. As a technical matter, it is placed as a new section in the draft rather than an amendment of AS 39.25.180 because the primary purpose of sec. 180 was to settle matters at the transition from Territory to State. Since that was accomplished long ago, the Revisor of Statutes recommended repealing AS 39.25.180 and setting up this as a separate section.

Page 16
Line 21

Section 18. AS 39.25.192. Employee Political Rights.

As mentioned in the discussion of AS 39.25.160(14), this new section takes existing statutory language and sets it out separately to make clear its content. Some redrafting for style was done, but the substance was not changed.

Page 17
Line 4

Section 19. AS 39.25.180. Status of Present Employees.

As mentioned in the discussion of Sec. 17, AS 39.25.185, this section is repealed but its provision for hiring federal employees is placed in a separate section of the statutes.

TBC:lmk

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

September 19, 1980

SUBJECT: Comments on work draft for state Personnel
Act revisions. (Work Order No. 12-0067)

TO: Blue Ribbon Commission on the State Personnel
Act
Attn: Teresa B. Cramer, A.A.

FROM: Linn H. Asper *ella*
Legislative Counsel

I have prepared a work draft in bill form based on your work with the commission. We discussed the proposed Personnel Act revisions earlier, but I think two sections of the legislation should be reconsidered by the commission.

The proposed revision of AS 39.25.110 includes [subsection (a)] a policy statement about the kind of positions which should be placed in the exempt service. Since this subsection will have no legal effect, I suggest that it be placed in the committee report on the legislation rather than in the body of the bill itself.

The second section which poses problems is AS 39.24.140(d) and (e) dealing with separate procedures for amending the personnel rules depending on whether the proposed amendments are matters of public policy or matters of internal management of the state agencies. The difficulty is that the distinction between "matters of public policy" and "matters of internal management" is unclear. I am not able to tell from the present wording what purpose is to be served by the different amendment procedures or how the board is to distinguish between public policy amendments and internal management amendments. There appears to be no prior usage of these terms in the statutes or cases which would clarify their meaning in the legislation. I think this section needs a further definition of the terms used. Also, if I knew why the commission wants different amendment procedures

Teresa B. Crame
Page 2
September 19, 1980

for different matters, I think I could draft language that will be less ambiguous.

Some changes have been made in your draft, but they are generally limited to style and not substance. Please call on me if you want to discuss anything about the legislation.

LHA:ljb

Enclosure

M E M O R A N D U M

September 15, 1980

TO: Billy Berrier, Director
Legal Services

FROM: Teresa B. Cramer, Administrative Assistant
Blue Ribbon Commission

SUBJECT: Work Order Request - Revision of the State Personnel Act

Enclosed are revisions of sections of the State Personnel Act which the Blue Ribbon Commission discussed at its last meeting. The Commission would like the bill drafter assigned to this project to review the Act and make suggestions or additional changes which appear advisable from a technical or legal approach. The work draft will be reviewed by the Commission before this needs to be put in final form.

In the revisions which I am enclosing, I have occasionally suggested alternative approaches which the Commission may wish to follow. Either the work draft should include each alternative or amendments should be drafted for the Commission's consideration.

If there are questions, I would be happy to respond.

TBC:lmk
Enclosures



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

TO: Blue Ribbon Commission Members
FROM: Teresa B. Cramer, Administrative Assistant
DATE: August 11, 1980
RE: Revision of the State Personnel Act

In the 1980 Report to the Legislature the commission recommended that the State Personnel Act be reviewed and, where necessary, revised. This memorandum sets out the sections of the Act followed by commentary where it seemed appropriate. Many of the topics which have concerned the commission in the past are implemented by the Personnel Rules rather than by the State Personnel Act itself, and therefore discussion of those issues might be more appropriate during a review of the Rules.

ARTICLE 1. ADMINISTRATION.

Sec. 39.25.010. Purpose of chapter. It is the purpose of this chapter to establish a system of personnel administration based upon the merit principle and adapted to the requirements of the state to the end that persons best qualified to perform the functions of the state will be employed, and that an effective career service will be encouraged, developed and maintained.

(b) The merit principle of employment includes the following:

- (1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
- (2) regular integrated salary programs based on the nature of the work performed;
- (3) retention of employees with permanent status on the basis of the adequacy of their performance, reasonable efforts of temporary duration for correction in inadequate performance, and separation for cause;
- (4) equal treatment of applicants and employees with regard only to consideration within the merit principles of employment; and
- (5) selection and retention of an employee's position secure from political influences.

Comment: This section was amended by Chapter 46, SLA, 1980 (SCS HB 908) which the commission sponsored.

Sec. 39.25.020. Appointing authority. The authority to appoint to positions in the state service is as follows:

(1) The legislature is the appointing authority for all officers and employees of the legislature and the legislative agencies, but the authority to make appointments may be delegated.

(2) The governor is the appointing authority for all officers and employees of the executive branch, but the authority to make appointments may be delegated.

(3) The chief justice of the supreme court is the appointing authority for all administrative and clerical personnel of the state judicial system, but the authority to make appointments may be delegated.

(4) The board of regents is the appointing authority for all employees of the University of Alaska, but the authority to make appointments may be delegated.

Sec. 39.25.030. Division of personnel and board. There is established within the Department of Administration a division of personnel. There is established within the division of personnel a personnel board.

Sec. 39.25.040. Director of personnel. The head of the division of personnel is the director of personnel appointed by the commissioner of administration and responsible to the commissioner of administration for the execution of the duties and responsibilities imposed by this chapter and the rules adopted under this chapter. The director of personnel must have at least three years of practical working experience in the field of personnel administration.

Comment: There is no similar provision for the director of labor relations, either in the State Personnel Act or in the Public Employment Relations Act. In SB 256, the bill sponsored in 1979 by the Commission to create a Department of Employee Relations, the following language was proposed:

The head of the division of labor relations is the director of labor relations appointed by the commissioner (of the Department of Employee Relations, in the bill). The director of labor relations shall have at least three years of full-time experience in labor relations, either in the public or private sector.

The head of the division of personnel is the director of personnel, appointed by the commissioner. The director of personnel shall have at least three years of full-time experience in personnel administration either in the public or private sector. (See SB 256, page 1, line 23 to page 2, line 3.)

Sec. 39.25.050. Powers and duties. The director of personnel shall direct and supervise the administrative and technical activities of the division of personnel. In addition to the other duties imposed on him, he shall

- (1) administer this chapter and the personnel rules;
- (2) encourage and exercise leadership in the development of effective personnel administration in the state government;
- (3) develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness and morale;

- (4) attend meetings of the personnel board and serve as secretary for the board;
- (5) establish and maintain a roster of employees subject to this chapter;
- (6) prepare the rules, not inconsistent with this chapter, which are required to implement and administer this chapter;
- (7) perform other lawful acts which he considers necessary or desirable to carry out the purposes of this chapter.

Sec. 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. Initial appointments to the board are for terms of two, four, and six years. Subsequent appointments are for six-year terms. 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 shall be qualified electors of the state who are not employees or officers of the state. Not more than two members of the board may be members of the same political party.

(c) A board member holds office at the pleasure of the governor notwithstanding the member's term.

(d) A member of the board may receive a per diem allowance and transportation expenses incurred in carrying out his duties.

Sec. 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 the original rules or a part of them within 60 days of their submission to the board and approve or disapprove amendment to the rules within 30 days of submission to the board, and in carrying out this duty, the board, if requested, may hold the public hearings it considers necessary;

(2) consider and act upon recommendations for the extension of the partially exempt service and the classified service as provided in § 130 of this chapter;

(3) hear and determine appeals by employees in the classified service as provided in § 170 of this chapter;

(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 chairman 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.

Comment: The Personnel Board has become much less active since many of its functions have been taken over by collective bargaining agreements. However, the members of the board serve on the Labor Relations Agency and the Public Employee Retirement Board which, as a result of legislation passed last session, has been made responsible for setting policies and serving as an appeals board for both the supplemental employee benefit program and the deferred compensation program for state employees.

Sec. 39.25.080. Public records. The state personnel records, except those records which the rules require to be held confidential for reasons of public policy, are public records and are open to public inspection, subject to reasonable regulations as to the time and manner of inspection.

ARTICLE 2. COVERAGE OF PERSONNEL.

Sec. 39.25.090. Coverage of chapter. This chapter and the rules adopted under it apply to all positions in (1) the classified service, and (2) the partially exempt service as specifically provided.

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.

Sec. 39.25.110. Exempt service. 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 of the supreme court, judges of the superior court, judges and magistrates of other state courts established by law;
- (3) the administrative director and all other employees of the state court system, and employees and members of the Judicial Council;
- (4) the chief administrative officer of each house of the legislature;
- (5) all employees of the state legislature and its agencies;
- (6) the head of each principal department in the executive branch;
- (7) officers, members of the teaching staff, and employees of the University of Alaska;
- (8) certificated teachers employed by the state to teach in schools operated by the state;
- (9) patients and inmates employed in state institutions;
- (10) persons employed in a professional capacity to make a temporary and special inquiry, study, or examination as authorized by the governor, the legislature, or a legislative committee;
- (11) members of boards, commissions, or authorities, except as otherwise provided by law;
- (12) personnel 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 collective bargaining agreements provided in AS 23.40.040;
- (13) commissioners of the Alaska Public Utilities Commission;
- (14) the executive officer of the Alaska Commission on Postsecondary Education;
- (15) commissioners and employees of the Alaska Commercial Fisheries Entry Commission;
- (16) the ombudsman and his staff;
- (17) the members, executive secretary and legal counsel of the Alaska Municipal Bond Bank Authority;
- (18) certified teachers and noncertified 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 operation, control and management of a regional educational attendance area school board.

(19) licensed physicians, as defined in AS 47.30.340(9), employed by the division of mental health and developmental disabilities, Department of Health and Social Services;

(20) petroleum engineers and petroleum geologists employed in a professional capacity by the Department of Natural Resources except for those employed in the division of geological and geophysical surveys.

(21) employees of the Alaska Gas Pipeline Financing Authority.

(22) members of the board of trustees, the executive director, and staff of the Alaska Permanent Fund Corporation.

(22) employees of the Alaska Energy Center.

(23) the executive director and other employees of the Alaska Industrial Development Authority.

(23) 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.

Comment: This section provides no standards for the legislature to consider when adding new positions to the exempt service. For a list of positions in the exempt service on October 23, 1979, see Appendix B to the 1980 commission Report to the Legislature.

Sec. 39.25.120. Partially exempt service. The following positions in the state service constitute the partially exempt service and are subject to this chapter and the rules adopted under it only as specifically provided in this chapter. Positions in the partially exempt service shall be included in the position classification plan established under this chapter, and these positions shall be compensated according to the pay plan. Persons holding positions in the partially exempt service are not required to take examinations, qualify or earn a place on a register, nor are they eligible for a hearing by the personnel board in case of dismissal, demotion, or suspension. Positions in the partially exempt service are specifically exempt from the rule established under § 150(3)—(11), (14), (15), (18) of this chapter. They are also specifically exempt from §§ 170 and 180 of this chapter and as stated in § 160(a) of this chapter:

(1) assistant commissioners of the principal departments of the executive branch;

(2) the directors, division of personnel, division of public health, division of medical assistance, and those other directors of the major divisions of the principal departments of the executive branch as are specifically designated by the governor;

(3) attorney members of the staff of the Department of Law;

(4) one private secretary for each head of a principal department in the executive branch;

(5) all employees of the Office of the Governor and the lieutenant governor, including the staff of the governor's mansion and the attorney members of the staff of the public defender agency, but not including the nonattorney members of the staff of that agency;

(6) Repealed by § 4 ch 78 SLA 1971.

(7) Repealed by § 9 ch 47 SLA 1974.

(8) the director and deputy director of the division of tourism in the Department of Commerce and Economic Development;

(9) regional directors of the Department of Transportation and Public Facilities.

(10) the executive director and deputy director of the Alaska Public Utilities Commission.

(11) the state forester, in the Department of Natural Resources.

(12) the director, deputy director, staff legal counsel, and hearing officers of the Alaska Transportation Commission.

Comment: Partially exempt positions are specifically excluded from the Personnel Rules governing the following topics as set out in the indicated subsection of AS 29.25.150:

- (3) employee selection methods, including open competitive exams;
- (4) filling positions through promotion whenever practicable;
- (5) eligible lists for appointment and promotion;
- (6) a procedure for certifying eligibles;
- (7) probation before an appointment becomes permanent;
- (8) emergency appointments;
- (9) nonpermanent appointments;
- (10) provisional appointments;
- (11) transfers from one department to another;
- (14) reinstatement of a person who resigns in good standing;
- (15) layoffs for lack of funds based on performance and seniority; and
- (18) grievance procedure.

In addition, partially exempt positions are exempt from AS 39.25.170 (Hearings and Appeals upon Dismissal, Demotion or Suspension) and from AS 39.25.180 (Status of Present Employees).

The topics for which AS 39.25.150 directs that Personnel Rules be adopted and which do apply to the partially exempt service include:

- (1) the classification plan
- (2) the pay plan
- (12) transfers from one area of the state to another
- (13) payment of transportation costs when an employee transfers at the request of the employer
- (16) performance records
- (17) disciplinary suspension
- (19) hours of work
- (20) methods and procedures for overtime work and pay
- (21) delegation of personnel duties to the principal departments;
- (22) other rules which are necessary;
- (23) employment preference rights to veterans;
- (24) permanent part-time employment; and
- (25) employment preference for the severely handicapped.

For a list of positions in the partially exempt service on September 27, 1979 see Appendix D of the 1980 commission Report to the Legislature.

Sec. 39.25.130. Extension of partially exempt and classified services. (a) After June 30, 1961, the personnel board, upon written recommendation of the commissioner of administration, may extend the partially exempt service to include any position which was in the classified service on April 19, 1960, which, in the judgment of the board:

(1) involves principal responsibility for the determination of policy;
(2) involves principal responsibility for the way in which policies are carried out; or

(3) involves responsibilities and duties of a type not susceptible to the ordinary recruiting and examining procedures.

(b) No positions may be included in the partially exempt service under this section if the inclusion is inconsistent with federal requirements for state agencies supported in whole or in part by federal funds.

(c) After June 30, 1961, the personnel board, upon written recommendation of the commissioner of administration, may extend the classified service to include any position which was in the partially exempt service on April 19, 1960.

Comment: A strict reading of this section would limit the authority of the Personnel Board to act only on positions which existed on April 19, 1960. It is my understanding that the board acts on positions created after that date as well. The commission may wish to propose an amendment to this section to clarify their authority.

ARTICLE 3. PERSONNEL RULES.

Sec. 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 the time he submits the amendments to the personnel board, the commissioner of administration shall, by posting in public buildings throughout the state, give notice that the personnel board has the amendments under consideration. The amendments have the effect of law 30 days after they are submitted to the personnel board if not disapproved by the personnel board. The personnel board, if requested, may hold public hearings on the amendments.

(d) The rules may provide for exemptions and modifications which 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 may be published in the Alaska Administrative Register and Code for informational purposes.

Comment: In SB 256, the bill sponsored by the commission to create a Department of Employee Relations, amendments were proposed to this section to eliminate the exemption from the Administrative Procedures Act. (See SB 256, Section 14, page 5, line 28 to page 6, line 6).

Sec. 39.25.150. Scope of rules. The personnel rules shall provide for

(1) the preparation, maintenance, and revision by the director of personnel, subject to approval by the commissioner of administration and the personnel board, of a position classification plan for all positions in the classified and partially exempt services; in the position classification plan all positions shall be grouped together into classes on the basis of duties and responsibilities; the position classification plan shall include for each class of position an appropriate title, a description of the duties and responsibilities, training and experience qualifications, and other necessary position specifications;

(2) the preparation, maintenance, revision, and administration by the director of personnel of a pay plan for all positions in the classified and partially exempt services; the pay plan shall be prepared after consultation with the appointing authorities or their designee, and with representatives of interested employee groups; the pay plan shall be based upon the position classification plan, shall provide for fair and reasonable compensation for services rendered, and shall be based on the principle of like pay for like work; commissioners' salaries are not the maximum limit for the pay plan and in exceptional circumstances higher salaries may be specified; the pay plan may provide for uniform starting pay, increments, and area and time differentials; the pay plan prepared under this section may be amended, approved or disapproved by the legislature in regular or special session; after the pay plan is put into effect, no salary or wage payment may be made to a state employee covered by the pay plan unless the payment is in accordance with this chapter and the rules adopted under this chapter;

(3) the use of sound employee selection methods, including open competitive examinations to test the fitness of applicants for positions in the state service;

(4) promotions from within the state service when there are qualified candidates in the state service; vacancies shall be filled by promotion whenever practicable and in the best interest of the state service, and promotion shall be by competitive examination whenever possible; in considering promotions, applicants' qualifications, performance record, seniority, and conduct shall be evaluated;

(5) the establishment and maintenance of eligible lists for appointment and promotion; the names of eligible candidates shall be placed on eligible lists in order of their relative performance in the examinations;

(6) the procedure for certifying eligibles;

(7) a period of probation not to exceed one year before an appointment to a position becomes permanent, except that a permanent employee receiving a promotional appointment retains permanent status in the service and the job class from which appointed for the duration of the probationary period, and may be demoted to his former class without right of appeal, § 170 of this chapter notwithstanding, but if dismissed from the service he has appeal rights under § 170 of this chapter;

- (8) emergency appointments to positions in the state service;
- (9) [Effective January 1, 1980] nonpermanent appointments to positions in the state service in accordance with AS 39.25.195 — 39.25.200;
- (10) provisional appointment without competitive examination when appropriate eligible lists are not available;
- (11) transfers from one department to another and from another merit system jurisdiction to the state service;
- (12) transfers from one area of the state to another;
- (13) the payment of transportation costs when an employee transfers from one area to another at the request of the employer;
- (14) the reinstatement of a person who resigns in good standing;
- (15) layoffs for reason of lack of funds or work, abolition of positions, or material changes in duties or organization; both performance and seniority records shall be considered in the development of layoff orders;
- (16) the development, maintenance, and utilization of employee performance records;
- (17) the imposition of disciplinary suspension without pay for not longer than 30 days in any 12-month period;
- (18) the procedures for review of disputed personnel actions and for resolving employee and interagency grievances;
- (19) hours of work for all employees in the state service;
- (20) methods and procedures covering overtime work and pay;
- (21) the delegation, where feasible, of personnel responsibilities and duties to the principal departments of the executive branch;
- (22) other rules and administrative regulations, not inconsistent with this chapter, which are necessary for its enforcement;
- (23) the granting of employment preference rights to a veteran at each time he applies for employment, not within the area of promotion, when he possesses the necessary qualifications in the job classification for which he applies under this chapter; the term "veteran" means a person with 90 days or more active service in the armed forces of the United States who has been honorably discharged after having served during any period between April 6, 1917, and December 1, 1919, between September 16, 1940, and December 31, 1947, or between June 27, 1950, and November 7, 1975 [A DATE TO BE DETERMINED BY THE LEGISLATURE WHICH SHALL BE ON OR ABOUT SIX MONTHS AFTER THE TERMINATION OF HOSTILITIES INVOLVING FORCES OF THE UNITED STATES IN VIETNAM]; the term "disabled veteran" means a veteran who is rated by the United States Veterans' Administration as having at least a 10 percent service-connected disability; in the examination to determine the qualification of applicants for entrance into the classified service under merit system examination, five additional points shall be added to the passing grade of a veteran and 10 additional points shall be added to the passing grade of a disabled veteran; if a position in the classified service is eliminated, employees shall be released in accordance with rules which give due effect to all factors; if all job qualifications are equal, the veteran shall be given preference over the nonveteran and the veteran shall be kept on the job; (.)

(24) the employment of persons in permanent positions on a part-time basis of 15 hours or more a week, including the employment of persons to fill one permanent full-time position; these employees shall be designated as permanent part-time employees.

(25) the granting of employment preference to severely handicapped persons; this includes the right to provisional appointment without competitive examination for periods up to four months and the granting of eligibility to a severely handicapped person provisionally appointed under the rules who demonstrates his ability to perform the job for permanent appointment without competitive examination; provisional employment under this paragraph may not exceed four months during a 12-month period; "severely handicapped" as used in this paragraph means persons certified by the director of the division of vocational rehabilitation to be severely handicapped.

Comment: This section sets out the topics which must be included in the Personnel Rules. Its requirements are general and permit the Division of Personnel flexibility in implementing them. The commission may wish to consider whether the statute gives sufficient guidance on the topics covered, whether additional topics should be required for inclusion in the Personnel Rules or whether there are some topics now included which should not be part of the Rules.

Sec. 39.25.153. Personnel rules for certain departments. (a) Each personnel officer for the departments of highways, fish and game, education, labor, and health and social services shall be permanently employed by and located within that department.

(b) The personnel officers specified in (a) of this section are authorized to adopt regulations providing for the activities specified in §§ 39.25.150(1)—(10), (13)—(18), (20) and (22) of this chapter for those classes of employees which are unique to the respective departments specified in (a) of this section. The initial determination as to which classes of employees are unique within the respective departments shall be made by the personnel officer in consultation with the commissioner of his department and subject to the approval of the director of personnel within the Department of Administration. Regulations adopted under this subsection relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act (AS 44.62).

(c) The personnel officers within the departments specified in (a) of this section are subject to all provisions of this chapter not in conflict with this section.

Comment: This section raises questions about the location of the personnel officers for departments. The commission debated whether personnel officers should be employed by the individual departments or by the Division of Personnel in its first year of operation. This section states that the personnel officers for some departments "shall be permanently employed by and located within that department." (Note that the reference within subsection (a) to the department of highways is obsolete.)

None of the personnel officers of the stated departments have used their authority to classify positions unique to their department or to adopt regulations concerning those positions. The director of personnel has the authority under AS 39.35.150(21) to delegate personnel responsibilities and duties to the principal departments and that has been the basis of the recent effort to delegate classification authority.

The commission may wish to consider whether the authority granted in this section should be extended to all of the principal departments or whether, in light of the authority to delegate given the director of personnel, this statute should be restricted in some manner.

The regulations which the personnel officers are empowered to adopt are exempted from the Administrative Procedures Act by subsection (b). In SB 256, the bill creating the Department of Employee Relations, this exemption was deleted.

Sec. 39.25.155. Vocational substitution program. (a) It is the purpose of this section to establish a liberal system under which Alaskan residents not employed by the state who do not meet the minimum educational or experience criteria for state employment may demonstrate their abilities and achieve temporary or permanent state employee status. This program is intended for use primarily in remote or underemployed areas where the opportunity to gain required hiring qualifications does not exist, but where there is a local need for employees with certain vocational skills. The provisions of this section apply notwithstanding the provisions of § 150(3) of this chapter.

(b) The director of personnel shall establish vocational standards as alternatives for educational or experience levels now required for nonprofessional occupational areas under the state personnel system and incorporate these alternatives into the state classification plan.

(c) Applicants shall be placed on eligible lists for the vocational classification indicated in their applications submitted to the division of personnel in the order of their relative ranking based on an assessment of their technical ability, place of residence and without written examination. Aptitude or occupational tests may be given if a position requires a specific ability.

(d) The director of personnel shall establish rates of pay for the selected vocational substitution classifications in relation to the beginning entry classification pay rates. However, vocational substitution personnel may not be classified lower than one pay range below the range to which the classified position is allocated.

(e) The director of personnel shall embody a concept combined of technical ability, place of residence, local hire and area unemployment in the personnel rules to accomplish the intent of this section.

(f) Applicants selected under this section are subject to the provisions of § 160 of this chapter.

(g) In this section "resident" means a person who has been domiciled in Alaska for at least one year immediately before filing his application.

Comment: The state has created job classes to meet the requirements of this section, but, with the advent of collective bargaining, the Labor, Trades and Crafts bargaining unit has taken over most of the positions which would fall within the intent of the statute and their hiring system is now used for employing people.

ARTICLE 4. PROHIBITIONS

Sec. 39.25.160. Generally. (a) A state employee may be a member of a national, state, or local political party, may take part in a political campaign, and may exercise his right as a citizen to express his opinion, register his party preference, if any, serve as a delegate to party conventions, and cast his vote. This section also permits appointment, nomination, or election to nonpartisan public office in a local government unit. However, this section may not be construed as permitting an employee in the classified service or in those exempt positions named in § 110(3) of this chapter to take an active part in the management of a political party above the precinct level.

(b) No person may give, render, pay, offer, solicit, or accept money, service, or other valuable thing in connection with an appointment, promotion, or advantage in a position in the classified service.

(c) No person may require an assessment, subscription, contribution, or service for a political party from an employee in the classified service.

(d) No person may seek or attempt to use a political party endorsement in connection with an appointment or promotion in the classified service.

(e) An employee in the classified service who seeks nomination or becomes a candidate for state or national elective political office shall immediately resign his position in the state service.

(f) No action affecting the employment status of an employee in the classified service or applicant for a position in the classified service, including appointment, promotion, demotion, suspension, or removal, may be taken or withheld for racial, political or religious reasons.

(g) No person may make a false statement, certificate, mark, rating, or report with regard to a test, certification, or appointment made under this chapter or in any manner commit a fraud preventing the impartial execution of this chapter and the personnel rules adopted under this chapter.

(h) No person may defeat, deceive, or obstruct another person in his right to examination, eligibility, certification, appointment, or promotion under this chapter.

Comment: The exempt employees referred to in subsection (a) who are not permitted to manage a political party above the precinct level are employees of the state court system and employees and members of the Judicial Council.

Note that the prohibitions contained in subsections (b) through (f) apply only to classified employees.

ARTICLE 5. HEARINGS.

Sec. 39.25.170. Hearings and appeals. (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 his 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 his position without loss of pay or leave benefit for the period of his dismissal, demotion, or suspension. In all other cases, the board shall report its findings and recommendations to both parties.

Comment: This section has been interpreted to apply only to permanent classified employees. The courts have declared that neither provisional nor probationary employees have a right to appeal under this section and the Division of Personnel has extended that reasoning to apply also to temporary (and presumably non-permanent) employees as well. In any case, since employee disputes are now governed by collective bargaining contracts for all union members, appeals through this statute are unlikely to occur.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

Sec. 39.25.180. Status of present employees. (a) A state employee with permanent status on April 19, 1960, under the merit system applying to the agencies receiving federal grants-in-aid is continued without examination and is not required to serve a new probationary period.

(b) A state employee with probationary status on April 19, 1960, under the merit system applying to the agencies receiving federal grants-in-aid, is continued without examination, but must satisfactorily complete his probationary period in order to achieve permanent status.

(c) An employee under the jurisdiction of this chapter and holding positions in the state service on April 19, 1960, may be continued in his position without examination if he meets the minimum qualifications for his position and if he has been in the state service for at least six months. An employee who does not meet the minimum qualifications for a position is subject to examination under this chapter and the personnel rules.

(d) A federal civil service employee may transfer to a position in the state service without examination if he meets the minimum qualifications for his position and has been on permanent status under federal civil service for not less than six months immediately preceding his transfer. The employee may be required to serve a probationary period of employment.

(e) This section does not preclude the reclassification or reallocation of a position held by an incumbent as provided in this chapter and the rules adopted under this chapter.

Sec. 39.25.190. Conflict with federal requirements. If any part of this chapter conflicts with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter is inoperative solely to the extent of the conflict and with respect to the agency directly affected, and does not affect the operation of the remainder of this chapter in its application.

ARTICLE 6A. NONPERMANENT EMPLOYEES.

Sec. 39.25.195. Appointment of nonpermanent employees [Effective January 1, 1980]. (a) An individual may not be appointed as a nonpermanent employee in the state service without prior written approval of the director except as an emergency employee.

(b) Every appointment to state service, except an emergency appointment, shall be made from an applicable eligible list or dispatching register unless in appropriate circumstances the director has waived this requirement.

(c) No appointment of a nonpermanent employee may be made unless the request for authorization is approved by the director, adequate money is available for the anticipated duration of the appointment, and the director determines that

(1) the hiring department or agency has certified that the legislature has appropriated money for the work in question knowing that it is to be performed by a nonpermanent employee;

(2) the hiring department or agency has certified that there is an immediate need to fill an authorized, permanent position and it is impractical either to establish the position or to make certification within a reasonable time;

(3) the hiring department or agency has certified that an immediate need exists and the director determines that the hiring department or agency could not reasonably have been expected to anticipate and meet through the creation of a permanent position; or

(4) the hiring department or agency has certified that a program or project exists and the director determines that the need for employees can most appropriately be met through the use of program or project employees.

(d) The director may not authorize the appointment of a nonpermanent employee if he determines that

(1) the need for the nonpermanent employee can practicably be met through establishing and filling an authorized permanent position;

(2) the need for the nonpermanent employee would be more appropriately met through an emergency appointment; or

(3) the need for the nonpermanent employee is not immediate and could reasonably have been anticipated and met by the appointing authority through the creation and filling of a permanent position.

(e) A nonpermanent employee may not be placed on the state payroll unless the director has first approved the personnel action for the employee's appointment.

(f) Nothing in this section prevents the director from adopting regulations to provide for timely substitution for permanent employees on medical or personal leave or other situations in which the appointment of an emergency or permanent employee would be inappropriate or when delay in making a temporary replacement would cause serious disruption.

(g) A department or agency may not use nonpermanent employees to perform a given work assignment for more than 120 calendar days in a 12-month period. A department or agency may not employ any individual as a nonpermanent employee for more than 120 calendar days in a 12-month period. In appropriate circumstances the director may authorize an extension of the limit imposed by this subsection if he finds that there is an immediate need for the extension. The limit imposed by this subsection does not apply to program or project employees or to substitutes appointed under (f) of this section.

(h) The director shall present a report on nonpermanent and emergency hire practices in state government to the legislature within the first 10 days of each regular legislative session. A hiring department or agency shall certify to the director within 15 working days following the appointment its reasons for appointing an emergency employee. The report shall include information on the number of nonpermanent employees authorized under this section and the number of emergency employees hired in each department, a description of the procedures used in authorizing the hiring of nonpermanent employees, and any recommendations for legislation required to implement the intent of this section.

Sec. 39.25.197. Termination of nonpermanent employees [Effective January 1, 1980]. When the director determines that an employee has been appointed as a result of a false certification under AS 39.25.195, he shall immediately notify the head of the affected department or agency in writing and the department or agency shall terminate the employee from state service within one working day after receipt of notice.

Sec. 39.25.198. Civil liability [Effective January 1, 1980]. A person who makes a false certificate under AS 39.25.195 is personally liable in a civil action to an individual terminated under AS 39.25.197 for any resultant damages and for punitive damages of an amount not to exceed three times the gross monthly salary at which the nonpermanent employee was appointed.

Sec. 39.25.200. Definitions [Effective January 1, 1980]. In AS 39.25.195 — 39.25.200,

(1) "certified" means signed by the head of a department or agency or by a responsible person designated by him;

(2) "director" means the director of the division of personnel and labor relations;

(3) "emergency employee" means an employee appointed for a period not to exceed 30 calendar days, whose appointment was made under conditions requiring immediate action to carry on work that is required in the public interest;

(4) "nonpermanent employee" means a person who is employed in state service in a position which is not in the exempt or partially exempt service and who is not a permanent or an emergency employee;

(5) "permanent employee" means an employee who has been appointed to an authorized, permanent full-time or part-time or permanent seasonal position in the classified service and who is in the process of completing or has successfully completed the required probationary service in that position;

(6) "program or project employee" means a nonpermanent employee, including a student intern, who is employed in state service with prior written understanding that employment in that position will continue for at most the duration of a specified program or project which is not a regular and continuing function of a department or agency and which has an established probable date of termination.

Comment: The commission may wish to review the state's experience with the nonpermanent law to consider whether changes should be proposed. The law has not yet been in effect for a full year and figures comparing its operation with the state's experience under the old laws and regulations for temporary employees are not yet readily available.

ARTICLE 7. GENERAL PROVISIONS.

Sec. 39.25.210. Penalties. (a) A person who wilfully violates a provision of this chapter or of the personnel rules adopted under this chapter is guilty of a misdemeanor.

(b) A state employee who is convicted of a misdemeanor under this chapter or the personnel rules adopted under this chapter immediately forfeits his office or position.

Sec. 39.25.220. Short title. This chapter may be cited as the State Personnel Act.

OTHER RELATED STATUTES

Comment: The statute prohibiting nepotism is narrower than the Personnel Rules on the same topic and has been determined by the Attorney General to restrict valid implementation of the Rule. Therefore, the commission may wish to propose legislation which would support the Rule in full.

STATUTE:

Sec. 39.10.010. Nepotism prohibited. It is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a principal state department, or agency to be employed in that department or agency.

PERSONNEL RULE:

13 09.0 Nepotism

13 09.1 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the appointing authority of the agency.

13 09.2 No person may be employed in a position in any division or subdivision of any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the head of the division or subdivision of the agency.

13 09.3 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to any other employee in the agency without the expressed approval of the appointing authority and the Director.



Inland Boatmen's Union

AFL-CIO

National Headquarters and Alaska Regional Office

124 Front Street / Juneau, Alaska 99801 / (907) 586-9711

October 28, 1980

Senator Bill Ray, Chairman
Blue Ribbon
Pouch AG
Mail Stop 0123
Juneau, Alaska 99811

RE: Exempt Status of Vessel Employees

Dear Senator Ray:

In response to your inquiry with respect to the classification of vessel employees of the Marine Highway System the following information is provided.

In the 1962 Legislative Session enabling legislation was passed permitting the Commissioner of Public Works to deal with labor unions for the manning of ferry vessels that would be operating in the State's expanded system. Prior to this time the State had operated two small shuttle ferrys between Haines, Alaska and Tee Harbor north of Juneau.

The manning of those two vessels, the M/V Chilkoot and the M/V Chilkat, was accomplished by contracting with the vessel operator Captain Gitkof, and he in turn contracted with the Inlandboatmen's Union to provide qualified Engineers, deck hands, cooks, and Mates.

In passing the enabling legislation that established the first collective bargaining relationship between the State and its employees the Legislature recognized several unique circumstances under which the vessels would have to operate.

1. The vessels would be under the jurisdiction of the United States Coast Guard for safe operation, navigational laws, manning, and examination and certification of vessel personnel.

Hawaii Region
707 Alakea
Honolulu, HA 96813
(808) 537-1773

Southern California Region
P. O. Box 16160
Long Beach, CA 90806
(213) 549-4000

Ketchikan Office
P. O. Box 7923
Ketchikan, AK 99901
(907) 225-9460

District Union, Seafarers International Union of North America

All employees would be required to possess U.S. Merchant Mariners documents endorsed for the proficiency ratings required by the United States Coast Guard Certificate of Inspection.

2. All Merchant Mariners (American Seamen) are wards of the Federal Court and covered by several Acts of Congress covering their employment rights, health, safety, and other conditions of employment.

3. The ships of the Marine Highway System would operate around the clock with schedules subject to wind and tidal conditions leaving little room for delays or layovers of any length of time. This requirement would demand that qualified personnel be available for immediate dispatch to the vessels should the need arise for a relief for any of the crew members onboard since under Coast Guard regulations the vessel may not sail without the proper complement of personnel.

4. All employees recruited from the Maritime Unions would be covered by private Taft-Hartley health and welfare, and retirement trust, and would not automatically participate in the Public Employees Retirement System, or State Health and Welfare benefit coverage without a considerable loss of benefits.

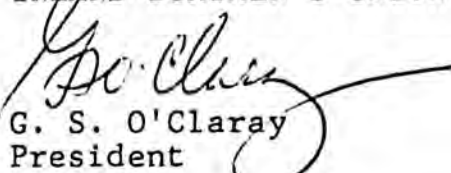
5. Merchant Seamen, Engineers, and Mates recruited from the private sector would be difficult to obtain if the wage classification system of the State was adhered to.

6. Inclusion of vessel employees under the State Personnel rules was determined to be undesirable in the areas of recruitment, assignment, and promotion of personnel as the Union contracts provided the Employer more flexibility in these areas. This flexibility is an absolute necessity for the type of operation the Marine Transportation vessels are involved in.

None of the above circumstances has changed since the inception of the expanded system in 1963. In review of the above I can find no substantive compelling motivation for changing the status of Marine Highway System employees from the exempt service to classified service and therefore I recommend no change in status.

Sincerely,

INLAND BOATMEN'S UNION


G. S. O'Claray
President

GS0:met

Blue Ribbon Commission on the
State Personnel Act
Pouch AG
Juneau, Alaska 99811
(907) 465-4442

MEMO TO: Blue Ribbon Commission Members

FROM: Teresa B. Cramer, Administrative Assistant

DATE: October 16, 1979

RE: Positions proposed to be removed from the right to bargain

This information was taken from a computer printout from February, 1979, which Bruce Carr of the Division of Personnel and Labor Relations made available to me. I have listed those positions which are presently permitted to organize under the Public Employment Relations Act and which are proposed to be excluded from bargaining. Most of those indicated are either Deputy Directors or Assistant Directors.

Unless otherwise indicated, the position is presently in the Supervisory Unit of APEA. Those presently in the General Government Unit are marked with (G). Those which are not presently in any unit but which are in the classified service are marked with (E). There are five of these positions in the state.

OFFICE OF THE GOVERNOR

There are no changes proposed. Most positions in the Office of the Governor are already in the partially exempt service.

DEPARTMENT OF ADMINISTRATION

Deputy State Internal Auditor
Deputy Director Labor Relations (E)
Deputy Director Personnel (E)
Deputy Director Finance
Deputy Director General Services & Supply
Assistant Director Gen. Serv. & Supply
Deputy Director Data Processing
Ass't Dire. Data Processing AJIS
Deputy Dir. Retirement & Benefits

DEPARTMENT OF LAW

All of the attorneys in the Department of Law are already members of the partially exempt service.

DEPARTMENT OF REVENUE

Deputy Dir. Revenue Administrative Services
Chief Enforcement Operations
Administrative Chief Support Enforcement
Chief Audit Services
Chief Revenue Intelligence Services
Chief Audit Services

DEPARTMENT OF EDUCATION

Deputy Dir. Education Program Support
Deputy Dir. Education Field Services
Deputy Dir. Administrative Support
Deputy Dir. Vocational Rehabilitation
Deputy Dir. State Libraries and Museum

DEPARTMENT OF HEALTH & SOCIAL SERVICES

Ass't Dir. Public Health
Ass't Dir. Mental Health
Deputy Dir. Corrections
Ass't Dir. Corrections

DEPARTMENT OF LABOR

Ass't Dir. Support Services
Deputy Dir. Workmen's Compensation
Ass't Dir. Employment Security
Ass't Dir. Employment Security

DEPARTMENT OF COMMERCE

Deputy Dir. Economic Enterprise
Deputy Dir. Public Util. Com'n
Executive Dir. ATC
Ass't Dir. Veterans Affairs
Deputy Dir. Business Loans

DEPARTMENT OF MILITARY AFFAIRS

Chief of Staff, Dep't of Military Affairs
Deputy Dir., Alaska Disaster Office

DEPARTMENT OF NATURAL RESOURCES

Deputy Dir. Lands
Deputy Dir. Lands
Deputy Dir. Parks

DEPARTMENT OF FISH & GAME

Executive Dir. Boards of Fish & Game (G)
Deputy Dir. Fish & Game Administration
Ass't Dir. Boards of Fish & Game (G)
Deputy Dir. Commercial Fish
Deputy Director Game
Deputy Dir. Sport Fish

DEPARTMENT OF PUBLIC SAFETY

Lt. Colonel Public Safety
Ass't State Fire Marshal
Lt. Col. Public Safety
Deputy Dir. Motor Vehicles

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

No changes were proposed for the employees of this department.

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS

Deputy Dir. Manpower Division

DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

Ass't Dir. DOT/PF Financial Mgt.
Deputy Dir. Adv. Planning Special Project
Deputy Dir. Highways Administration
Deputy Dir. Communications
Transportation Maintenance Manager III

TOTAL: 54