

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1371 SCOMM 51: BLUE RIBBON COMN. ON STATE PERSONNEL ACT 1978-1983

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

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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.

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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.

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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.

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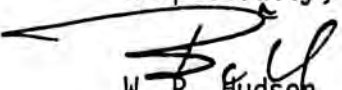
6. Develop multi-titled applications. In their last report, the Blue Ribbon Commission recommended that the Division of Personnel develop a system in which only one application is necessary from each applicant for each class series for which the applicant wishes to be considered. We are now attempting 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
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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

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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**

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TELEPHONE (907) 274-1651

October 28, 1980

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

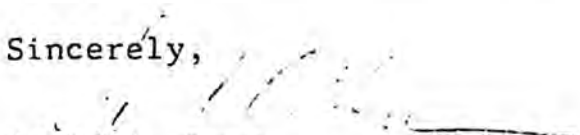
Dear Ms. Cramer:

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
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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. Cramer
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
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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.

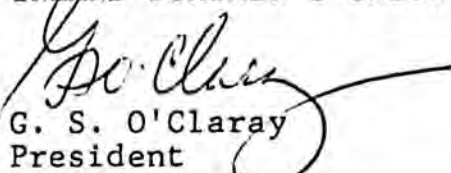
5. Merchant Seamen, Engineers, and Mates recruited from the private sector would be difficult to obtain if the wage classification system of the State was adhered to.

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



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

SCOMM

#51:17

Offered: 6/22/83
Referred: Finance

Original sponsor: Rules/Legislative Council

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 55 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to collective bargaining; and pro-
7 viding for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 23.40.215 is amended by adding a new subsection to
10 read:

11 (b) The Department of Administration shall submit the monetary
12 terms of an agreement to the legislature within 10 days after the
13 agreement of the parties, if the legislature is in session, or within
14 10 days after the convening of the next regular session. The legisla-
15 ture shall advise the parties by concurrent resolution if it approves
16 or disapproves of the monetary terms within 60 days after the agree-
17 ment is submitted to the legislature. The approval of the monetary
18 terms of an agreement under this subsection is a nonbinding, advisory
19 expression of legislative intent. If within 60 days after the agree-
20 ment is submitted the legislature advises the parties by concurrent
21 resolution that it disapproves the monetary terms of the agreement,
22 the parties may resume negotiations. If within 60 days after the
23 agreement is submitted, the legislature does not pass a concurrent
24 resolution under this section the monetary terms of the agreement are
25 considered approved.

26 * Sec. 2. AS 23.40.250 is amended by adding a new paragraph to read:

27 (8) "monetary terms of an agreement" means the changes in
28 the terms and conditions of employment resulting from an agreement
29 that will require an appropriation for their implementation or will

1 result in a change in state revenues or productive work hours for
2 state employees.

3 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
4 10.070(c).

Offered: 6/17/83

Original sponsor: Rules/Legislative Council

1 IN THE SENATE BY THE RULES COMMITTEE
2 CS FOR SENATE BILL NO. 55 (Rules)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act relating to collective bargaining; and pro-
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18 terms of an agreement under this subsection is a nonbinding, advisory
19 expression of legislative intent. If within 60 days after the agree-
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25 the terms and conditions of employment resulting from an agreement
26 that will require an appropriation for their implementation or will
27 result in a change in state revenues or productive work hours for
28 state employees.
29 * Sec. 3. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).

Offered: 6/6/83
Referred: Rules

Original sponsor: Rules/Legislative Council

1 IN THE SENATE BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 55 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to collective bargaining; and pro-
7 viding for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 23.40.215 is amended by adding a new subsection to
10 read:

11 (b) The Department of Administration shall submit the monetary
12 terms of an agreement to the legislature within 10 days after the
13 agreement of the parties, if the legislature is in session, or within
14 10 days after the convening of the next regular session. If the
15 legislature approves the monetary terms of the agreement, it shall
16 advise the parties by concurrent resolution within 60 days after the
17 agreement is submitted to the legislature. The approval of the mone-
18 tary terms of an agreement under this subsection is a nonbinding,
19 advisory expression of legislative intent. If within 60 days after
20 the agreement is submitted the legislature does not advise the parties
21 by concurrent resolution that it approves the monetary terms of the
22 agreement, the parties may resume negotiations.

23 * Sec. 2. AS 23.40.250 is amended by adding a new paragraph to read:

24 (8) "monetary terms of an agreement" means the changes in
25 the terms and conditions of employment resulting from an agreement
26 that will require an appropriation for their implementation or will
27 result in a change in state revenues or productive work hours for
28 state employees.

29 * Sec. 3. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).

ALASKA STATE LEGISLATURE

THIRTEENTH LEGISLATURE - FIRST SESSION

JUNEAU, ALASKA

THURSDAY

March 3, 1983

Forty-sixth Day

Pursuant to adjournment, the Senate was called to order by President Kerttula at 10:13 a.m.

The roll call showed twenty members present.

The prayer was offered by the Chaplain, Reverend Jimmy Stringer of the First Baptist Church.

Senator Ray moved that the journal for the forty-fifth legislative day be approved as certified. Without objection, it was so ordered.

MESSAGES FROM THE HOUSE

Message of March 2 was read, stating the House has passed the following:

FIRST READING AND REFERENCE OF
HOUSE RESOLUTIONS

HCR 2

HOUSE CONCURRENT RESOLUTION NO. 2 by Representatives Grussendorf and Fritz,

Relating to travel by senior citizens
aboard vessels of the state marine
highway system,

HCR 2 cont'd

was read the first time and referred to the State Affairs Committee and the Finance Committee.

FIRST READING AND REFERENCE OF HOUSE BILLS

HB 139

HOUSE BILL NO. 139 by Representatives Malone and Phillips, entitled:

"An Act providing a penalty for violation of a law or regulation relating to bees and beekeeping equipment."

was read the first time and referred to the Judiciary Committee.

HB 151

CS FOR HOUSE BILL NO. 151 (FIN) by the Finance Committee, entitled:

"An Act making a special appropriation to the Department of Natural Resources, division of parks, for acquisition and development of the House of Wickersham in Juneau; and providing for an effective date."

was read the first time and referred to the Resources Committee and the Finance Committee.

STANDING COMMITTEE REPORTS

SB 55

The Judiciary Committee considered SENATE BILL NO. 55 (relating to collective bargaining) and a majority of the committee recommended it be replaced with CS FOR SENATE BILL NO. 55 (JUD), do pass and attached the following letter of intent:

SB 55 cont'd

SENATE JUDICIARY COMMITTEE LETTER OF INTENT
SENATE BILL NO. 55

Before an organization and the state may enter into an agreement, the agreement proposed to be entered into shall be submitted to the legislature for consideration of the monetary terms of the agreement. Submittal of the proposed agreement to the legislature shall occur within ten (10) days after the proposed agreement of the parties has been reached, or ten (10) days after the convening of the next regular session. The monetary terms of the proposed agreement take effect if they are not rejected by the legislature by concurrent resolution within thirty (30) days after the agreement is submitted to the legislature.

/s/ Bill Ray
Senator Bill Ray, Chairman

The report was signed by Senator Ray, Chairman and concurred in by Senators Josephson, Pettyjohn and Eliason. Senator Ziegler signed "no recommendation".

SENATE BILL NO. 55 was referred to the Finance Committee.

SB 126

The Rules Committee considered SENATE BILL NO. 126 (amending ch. 82, SLA 1981) and recommended it be calendered March 3. The report was signed by Senator Faiks, Chairman and concurred in by Senators Kelly, Ray, Bennett and Ferguson.

SENATE BILL NO. 126 appears on today's calendar.

CONSIDERATION OF THE CALENDAR

SECOND READING OF SENATE BILLS

SB 126

SENATE BILL NO. 126 (amending ch. 82, SLA 1981) was read the second time.

SB 126 cont'd

Senator Sackett moved and asked unanimous consent for the adoption of the Finance Committee Substitute offered on page 250. Without objection, CS FOR SENATE BILL NO. 126 (FIN) (amending the purpose of an allocation made for Delta Junction School to also allow the purchase of administrative offices; efd) was adopted.

CS FOR SENATE BILL NO. 126 (FIN) was read the second time.

Senator Ray moved and asked unanimous consent that CS FOR SENATE BILL NO. 126 (FIN) be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 126 (FIN) was read the third time.

Senator Ray moved and asked unanimous consent that the title change be adopted. Without objection, the title change was adopted.

The question being: "Shall CS FOR SENATE BILL NO. 126 (FIN) (amending the purpose of an allocation made for Delta Junction School to also allow the purchase of administrative offices) pass the Senate?" The roll was taken with the following result:

CS SB 126 (FIN) 3RD

Yeas: 20 Bennett, Eliason, Fahrenkamp,
Faiks, Ferguson, Fischer Paul,
Fischer Vic, Gilman, Halford,
Josephson, Kelly, Kerttula, Moss,
Mulcahy, Pettyjohn, Ray, Rodey,
Sackett, Sturgulewski, Ziegler

Nays: 0

and so, CS FOR SENATE BILL NO. 126 (FIN) passed the Senate.

Senator Ray moved and asked unanimous consent that the roll call on the passage of the above bill be considered the roll call on the effective date clause. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 126 (FIN) was referred to the Secretary for engrossment.

JUDICIARY - BUTROVICH ROOM - 1:30 p.m.

Mar 4 SB 88 Minors present where alcohol is served
Mar 7 SJR 1 Equal Rights Amendment
Mar 11 HCR 11 Petit jurors using earphones
Mar 25 SB 20 Magistrates-judicial retirement system--TELE.

LABOR & COMMERCE - BELTZ ROOM - 1:30 p.m.

Mar 3 SB 67 utility facility highway projects

RESOURCES - BELTZ ROOM - 3:00 p.m.

Mar 4 Briefing - Dept. Environmental Conservation
Mar 7 SB 43, SB 102 Homesteads

SENATE FINANCE - 2:00 p.m. - Joint with Oil & Gas
Mar 7 Briefing on gas pipeline

HOUSE RESOURCES RM 118 - Joint with Oil & Gas
Mar 8 Dept. Minerals & Energy Manage.-leasing procedures

BELTZ ROOM
Mar 9 SB 124 Alaska Agricultural Loan Act
Briefing Admiralty Island mining project

FAIRBANKS N. STAR BOROUGH ASSEMBLY CHAMBERS - 4:30 p.m.
Mar 11 SB 14 State Forests
SB 108 Fairbanks State Forest
SB 79 Toxic & hazardous substances

STATE AFFAIRS - SENATE FINANCE ROOM - 1:30 p.m.

Mar 3 SB 68 - SB 71 Susitna Hydro Project

TRANSPORTATION - BUTROVICH ROOM - 1:30 p.m.

Mar 3 Overview Dept. Transportation & Public Facilities

LEGISLATIVE BUDGET & AUDIT - HOUSE FINANCE - 4:00 p.m.

Mar 3 Finance Research Center contract

LEGISLATIVE REFORM COMMITTEE - BELTZ ROOM - 12:00 p.m.

Mar 3 NCSL Staff

ANCHORAGE DELEGATION - BUTROVICH ROOM - 5:00 p.m.

Mar 3

MINORITY CAUCUS - BUTROVICH ROOM - UPON ADJOURNMENT

Mar 3

ANNOUNCEMENTS

*Meetings will be in Capitol Building and at times listed unless otherwise noted

COMMUNITY AND REGIONAL AFFAIRS - BELTZ ROOM - 3:00 p.m.

Mar 3 SB 37 State aid for municipalities
SB 98 Unincorporated community assistance

FINANCE - SENATE FINANCE ROOM - 9:00 a.m.

Mar 4 UA operating budget

SUBCOMMITTEES ON FINANCE - SENATE FINANCE ROOM - 1:30 p.m.

Administration - 8:00 a.m.
Mar 9 Overview

Court System - 8:00 a.m.
Mar 10 Budget

Education - HOUSE FINANCE ROOM - 3:00 p.m.
Mar 3 Joint w/House; Art Council and Historic Preservation

Education - 8:00 a.m.
Mar 4

Health & Social Services - 4:00 p.m.
Mar 3 Division of Family & Youth Services

Labor
Mar 4 Commissioner's Office, ESD, Administrative Services
Mar 8 Public Protection functions
Mar 9 Public Protection cont.

Military Affairs
Mar 10 Overview
Mar 11 Overview cont.

Revenue - 8:00 a.m.
Mar 8 Overview

HEALTH, EDUCATION & SOCIAL SERVICES - ROOM 504 - 3:00 p.m.

Mar 4 SB 122 Protection of the elderly
Mar 7 SB 97 Bethel Social Services, Inc. grant
SB 78 Public Employment Relations
Mar 9 SB 109 Board of Psychologists - Psychological Associate Examiners
Mar 11 SB 93 Endowment - Physical Sciences UA
SB 94 Endowment - Physical Sciences UA - special approp.

CITATIONS

Senator Ray moved and asked unanimous consent that the Citation In Memoriam - Ed Barber by Representative Ward and All Other Members of the House and Senators Vic Fisher and Ziegler be sponsored by All Other Members of the Senate. Without objection, it was so ordered.

Senator Ray moved that the following citations be approved:

Honoring - Ivan Blunka
by Representatives Herrmann, Davis and Zharoff
Senators Mulcahy and Sturgulewski

In Memoriam - Ed Barber
by Representative Ward and All Other Members of the House
Senators Vic Fischer and Ziegler and All Other Members of the Senate

In Memoriam - Robert Mayokok
by Representative Fuller
Senators Ferguson, Sturgulewski and Vic Fischer

In Memoriam - Jan Beukers
by Representative Zharoff
Senator Mulcahy

In Memoriam - Benjamin Aure, Jr.
by Representative Zharoff
Senator Mulcahy

In Memoriam - Willie Kuchenoff
by Representatives Herrmann and Zharoff
Senator Mulcahy

Without objection, the citations were approved and referred to the Secretary for transmittal.

Senator Ray moved and asked unanimous consent that the Rules be suspended and the publication and notice requirement on the Citation Honoring - Sweet Honey in the Rock by Representative Furnace be waived and taken up as a Special Order of Business at this time. Without objection, it was so ordered.

SPECIAL ORDER OF BUSINESS

Senator Ray moved that the Citation Honoring - Sweet Honey in the Rock by Representative Furnace be approved. Without objection, the citation was approved and referred to the Secretary for transmittal.

UNFINISHED BUSINESS

SB 143

Senator Vic Fischer, Chairman, moved and asked unanimous consent that the State Affairs Committee referral on SENATE BILL NO. 143 (solicitation of a prostitute by a patron a crime of prostitution punishable as a Class B misdemeanor) be waived. Without objection, it was so ordered.

SENATE BILL NO. 143 was referred to the Judiciary Committee.

ANNOUNCEMENTS

Announcements appear at the end of the journal.

SPECIAL ORDERS

Senator Ziegler moved and asked unanimous consent that he be excused from a call of the Senate from 10:30 a.m., March 31 through convening time April 4. Without objection, Senator Ziegler was excused.

Senator Gilman moved and asked unanimous consent that he be excused from a call of the Senate March 11-13. Without objection, Senator Gilman was excused.

Senator Sackett moved and asked unanimous consent that he be excused from a call of the Senate March 10-11. Without objection, Senator Sackett was excused.

ENGROSSMENT

The following has been engrossed, signed by the President and Secretary and transmitted to the House:

CSSB 126 (FIN)

ADJOURNMENT

Senator Ray moved that the Senate adjourn until 10:00 a.m., March 4, 1983. Without objection, the Senate adjourned at 10:40 a.m.

Peggy Mulligan
Secretary of the Senate

March 1983

Offered: 3/3/83
Referred: Finance

Original sponsor: Rules/Legislative Council

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 55 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to collective bargaining; and pro-
7 viding for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 23.40.210 is amended by adding a new subsection to
10 read:

(b) Before entering into an agreement between an organization and the state a proposed agreement approved by the organization and the state shall be submitted to the legislature for consideration of the monetary terms of the agreement. The proposed agreement shall be submitted to the legislature within 10 days after the agreement of the parties or 10 days after the convening of the next regular session. The agreement may take effect if the monetary terms of the agreement are not rejected by the legislature by concurrent resolution within 30 days after the agreement is submitted to the legislature.

20 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).

22

Introduced: 1/18/83
Referred: State Affairs and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE LEGISLATIVE
COUNCIL (for the Blue
Ribbon Commission on the
State Personnel Act)

1 IN THE SENATE

2

SENATE BILL NO. 55

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to collective bargaining; and
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 23.40.210 is amended by adding a new subsection to
10 read:

11 (b) When an agreement is entered into between an organization
12 and the state, the agreement shall be submitted to the legislature
13 within 10 days after the signing of the agreement by the parties or 10
14 days after the convening of the next regular session. The monetary
15 terms of an agreement take effect if they are not rejected by the
16 legislature by concurrent resolution within 30 days after the agree-
17 ment is submitted to the legislature.

18 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
19 10.070(c).



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 21, 1983

TO: House Labor & Commerce Committee

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

SUBJECT: CS for Senate Bill No. 55 (Rules)
Relating to Collective Bargaining

The Public Employment Relations Act provides that the monetary terms of any agreement entered into between the state and an employee representative are subject to funding through legislative appropriation. AS 23.40.215. The PERA does not set out a system of legislative review for the monetary terms. If the legislature is dissatisfied with the negotiated terms, there is no formal vehicle to explain to the parties to the agreement (the Administration and the employee union or association) the substance of the legislature's concerns. Therefore, the parties do not have a concrete set of limitations from which to work should they decide to renegotiate the original agreement. Furthermore, legislative delay and rejection of negotiated contracts has, in the past, led to the calling of a Special Session, which is an expensive way to resolve the issue.

The Blue Ribbon Commission recommends legislation to encourage legislative review of collective bargaining agreements early in the session. If the legislature is dissatisfied with the monetary terms, the parties may choose to renegotiate before the session adjourns with a clear understanding of the legislature's concerns.

Bill Analysis

Page 1
Line 9

The first section requires that the monetary terms of a collective bargaining agreement be submitted to the legislature within 10 days of agreement by the parties. If the parties reach an agreement while the legislature is not in session, then the monetary terms are to be submitted within 10 days of the convening of the next regular session. The legislature is given 60 days to consider the agreement and express its opinion by concurrent resolution.

- Line 17 Any approval given by the legislature is a "nonbinding, advisory expression of legislative intent." This language makes clear that the resolution does not take the place of an appropriation bill to fund the contract and permits the legislature to change its mind, should circumstances warrant.
- Line 19 If the legislature disapproves the negotiated agreement, the parties may resume negotiations.
- Line 23 The second section adds a definition of "monetary terms of an agreement" to the Public Employment Relations Act to set out those items which are subject to legislative review.
- Line 29 The third section provides for an immediate effective date.

TBC:lmk

6/6/83 Senate Finance

Amendment adopted w/ on change:

Mulcahy moves Version 1 w/ amendment

Josephson questions - recommends Version 2

Falks recs $\textcircled{P}$ bc requires ^{ppl to state} ~~version~~ objections

Adopted: Ficker, Falks, Mulcahy

Passed w/ indiv recs

Original sponsor: Rules/Legislative Council

IN THE SENATE

BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 55 (Finance)
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to collective bargaining; and providing for an effective date."

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

* Section 1. AS 23.40.215 is amended by adding a new subsection to read:

(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 days after the agreement of the parties, if the legislature is in session, or within 10 days after the convening of the next regular session. If the legislature approves the monetary terms of the agreement, it shall advise the parties by concurrent resolution within 60 days after the agreement is submitted to the legislature. The approval of the monetary terms of an agreement under this subsection is a nonbinding, advisory expression of legislative intent. If within 60 days after the agreement is submitted the legislature does not advise the parties by concurrent resolution that it approves the monetary terms of the agreement, the parties may resume negotiations.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

*Adopted w/ amendment by Senate Finance
June 6, 1983 -*

In favor of this version: Fischer, Faiks, Mulcahy

Adopted as changed 6/6/83
by Senate Finance Committee

A M E N D M E N T

Offered in the Senate

By V. Fischer

TO: CSSB 55 (Finance)

Page 1, following line 22, add a new section 2:

* Sec. 2. AS 23.40.250 is amended by adding a new subsection to read:

(8) "Monetary terms of an agreement" means those changes in the terms ^{and} ~~or~~ conditions of employment resulting from an agreement that will require an appropriation for its implementation or will result in a change in state revenues or productive work hours for state employees.

Renumber subsequent section accordingly.

Mon 9 Senate Finance
def. of monetary terms

Original sponsor: Rules/Legislative Council

IN THE SENATE

BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 55 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 days after the agreement of the parties, if the legislature is in session, or within 10 days after the convening of the next regular session. Unless, within 60 days after the agreement is submitted, the legislature advises the parties by concurrent resolution that it will reject the monetary terms of the agreement, the monetary terms of the agreement are considered acceptable to the legislature. The approval or rejection of the monetary terms of an agreement under this subsection is a nonbinding, advisory expression of legislative intent. If the legislature advises the parties by concurrent resolution that it will reject the monetary terms of the agreement, the parties may resume negotiations.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Senator Vic Fischer

Alaska State Legislature

Pouch V • Juneau, Alaska 99811 • (907) 465-4954



MEMORANDUM

TO: Senate Finance Committee

FROM: Senator Vic Fischer

RE: CSSB 55 (Finance)

DATE: June 2, 1983

SB 55 was before the committee on May 19. The consensus of the committee, at that time, was to review committee substitutes to address constitutional and other problems.

Two CS versions of SB 55 are attached. Version 1 of CSSB 55 (Finance) follows the suggestion made by Senator Mulcahy that the legislature make a positive action to express agreement of the monetary terms. Version 2 of CSSB 55 (Finance) was drafted by the Department of Law at the request of Senator Ray, and follows more closely the original intent of the bill.

Both make some changes from the Judiciary CS. The substantive changes are:

- a) In both proposed committee substitutes, the Department of Administration submits the monetary terms only after the agreement has been entered into; in the Judiciary version of SB 55, the monetary terms would be submitted to the legislature before the state and an organization entered into an agreement.
- b) Both proposed committee substitutes add a sentence that legislative action taken by resolution on the monetary terms of an agreement is a non-binding advisory expression of legislative intent.
- c) Both committee substitutes also change the period of time in which the legislature can act on the submitted terms from 30 to 60 days.
- d) Both committee substitutes contain a provision enabling parties to resume negotiations if the monetary terms are not supported by the legislature.

The differences between the two proposed committee substitutes are:

a) Version 1 requires an approval by concurrent resolution to express that the monetary terms of an agreement are acceptable to the legislature (lines 14-17). In version 2, the monetary terms of the agreement shall be considered acceptable to the legislature, unless a concurrent resolution expressing rejection of the monetary terms of the agreement is passed (lines 14- 18).

b) Regarding negotiations, version 1 of the bill states that the parties may resume negotiations if the legislature does not pass a concurrent resolution approving the monetary terms of the agreement (lines 19-23). Version 2 of the bill states that the parties may resume negotiations if the legislature passes a concurrent resolution rejecting the monetary terms of the agreement (lines 20-23).

FROM
MURRAY

Original sponsor: Rules/Legislative Council

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 55 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to collective bargaining; and pro-
7 viding for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 23.40.210 is amended by adding a new subsection to
10 read:

11 (b) Before entering into an agreement between an organization
12 and the state a proposed agreement approved by the organization and
13 the state shall be submitted to the legislature for consideration of
14 the monetary terms of the agreement. The proposed agreement shall be
15 submitted to the legislature within 10 days after the agreement of the
16 parties or 10 days after the convening of the next regular session.
17 The agreement may take effect only if the monetary terms of the agree-
18 ment are approved by the legislature by concurrent resolution within
19 60 days after the agreement is submitted to the legislature.

20 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

MAY 23 1983

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 20, 1983

The Honorable Bill Ray
Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CSSB 55 -- collective
bargaining
Our file no.: 377-103-83

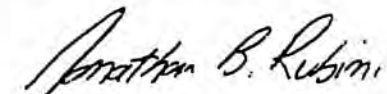
Dear Senator Ray:

Attached please find a proposed substitute for CSSB 55 which does not raise the legal concerns identified in our letter of May 18, 1983. As you will note, the substitute provides for the prompt submission of the monetary terms of an agreement to the legislature. The legislature, acting in its advisory capacity, will be considered to approve the monetary terms, unless a contrary concurrent resolution is adopted within 30 days. Any action under this new review procedure does not disturb any legislatures prerogatives with respect to the funding of an agreement.

We apologize that the Department of Law did not provide you with a prepared substitute for SB 55 at an earlier date. If you have any questions, please feel free to call.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:



Jonathan B. Rubini
Assistant Attorney General

JBR:jb

cc: Emil Notti
Legislative Assistant
Governor's Office

Eleanor Andrews
Deputy Commissioner -- Personnel Mgr.
Department of Administration

PROPOSED (Dept. of Law)

Offered: 3/3/83
Referred: Finance

Original sponsor: Rules/Legislative Council

IN THE SENATE

BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 55 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to collective bargaining; and providing for an effective date."

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

* Section 1. AS 23.40.215 is amended by adding a new subsection to read:

(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 days after the agreement of the parties, if the legislature is in session, or within 10 days after the convening of the next regular session. Unless, within 30 days after the agreement is submitted, the legislature advises the parties by concurrent resolution that it will reject the monetary terms of the agreement, the monetary terms of the agreement are considered acceptable to the legislature. The approval or rejection of the monetary terms of an agreement under this subsection is a non-binding, advisory expression of legislative intent. If the legislature advises the parties by concurrent resolution that it will reject the monetary terms of the agreement, the parties shall resume negotiations.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Thursday, May 26th

Senator Ray -

Two Committee Substitutes have been prepared for SB 55 - the collective bargaining bill. One comes from Jon Rubini of the Attorney General's office and has been sent to you already. The other was prepared at Senator Mulcahy's request. There are some problems with this second CS, the major one being that it provides that a collective bargaining agreement may take effect only if the monetary terms are approved by the legislature within 60 days of being submitted.

The problem with this approach is that, in fact, the legislature may fail to meet the 60-day deadline but still be willing to fund the agreements. This leaves employee representatives and the executive branch to second guess whether the legislature has serious disagreements with the terms proposed or whether there were timing problems which delayed legislative action. It ~~takes~~ ^{reduces} the pressure ~~to act off~~ ^{on} ~~(the legislature)~~ to make its views known promptly.

Should I talk with Senator Mulcahy's office about the CS he is proposing?

Jerry

Senate Finance Comm. Hearing
5/19/83 El. Andrews

Sep. of powers

If leg & act → funding by default?
If litig req'd, chaos till ct decides

If admin → "prop" agit, then leg appears
to be in posture of neg. w/ unions

Sen Fairs: Admin neg. k & leg & fund pay <? yes
legal ram? 1977/9 leg & fund. Filed st
Ct ruled leg role fund or not fund.

Parties strike if wanted

CB good faith by all 3 - broken one seg → whole limbo
? - leg does not have to fund? (Correct)

EA: approp by default

Sen B: all parts of agit

EA: parties have can set eff. date for non-mon terms
(effective on passage of #)

Sen J: delay - all in limbo while leg. dallies

EA: any limbo = litig. over legality of law

Sen J: what cd happen: Key comm. Chair wants k
effect, then Leg. bd even if disagrees

Sen F: poss w/ orig bill - CS says agit "may" take

Sen Fairs: Mon terms & take effect unless leg approps

Sen J: Letter of Intent

John Rubini

2 Q CRB55 - Not sure of answers, but prob. litig
Sen Fish - discuss for record

Annulment by resolution
① ~~Failure to act ~~as approp~~~~

② De facto approp: Failure to act but no approp
leg might be compromising reviewing K terms(?)
during approp process

Sen Fischer rec - lay on table: return to bill file

Senator Vic Fischer

Alaska State Legislature

Pouch V • Juneau, Alaska 99811 • (907) 465-4954



MEMORANDUM

TO: Senate Finance Committee

FROM: Senator Vic Fischer

RE: CSSB 55 (Jud)

DATE: May 18, 1983

CSSB 55 (Jud) adds a new subsection to AS 23.40.210.

Section 1 states that when a proposed agreement is reached between an organization and the state, the agreement shall be submitted to the legislature within 10 days after agreement or 10 days after the convening of the legislative session for consideration of the monetary terms of the agreement.

Lines 9-16
Lines 17-19 state that the agreement may take effect if the monetary terms of the agreement are not rejected by concurrent resolution within 30 days after submission of the agreement to the legislature.

Section 2 provides for an immediate effective date.

SB 55 was waived to the Judiciary committee from the State Affairs committee because there seemed to be some problems with the bill that could best be taken care of in that committee. No senators in the Senate State Affairs Committee disagreed with the concept of the bill.

The Judiciary Committee adopted a Committee Substitute which called for a proposed agreement to be submitted to the legislature as opposed to a signed agreement as outlined in the original version of the bill.

I requested an opinion from the Attorney General for possible constitutional and other legal problems that might be associated with this bill. The opinion of May 18, 1983 is enclosed in your backup material. John Rubini from the Attorney General's office will be here to testify on these constitutional problems.

The Department of Administration position is also included in your backup. Also included in your backup is the original version of the bill.

Offered: 3/3/83
Referred: Finance

Original sponsor: Rules/Legislative Council

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 55 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to collective bargaining; and providing for an effective date."

7

8

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

9

* Section 1. AS 23.40.210 is amended by adding a new subsection to

10 read:

11

(b) Before entering into an agreement between an organization

12

and the state a proposed agreement approved by the organization and

13

the state shall be submitted to the legislature for consideration of

14

the monetary terms of the agreement. The proposed agreement shall be

15

submitted to the legislature within 10 days after the agreement of the

16

parties or 10 days after the convening of the next regular session.

17

The agreement may take effect if the monetary terms of the agreement

18

are not rejected by the legislature by concurrent resolution within 30

19

days after the agreement is submitted to the legislature.

20

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-

21

10.070(c).

22

I. REQUEST

Bill/Resolution No.: CS SB 55 (Judiciary)

Title: See page 2

Sponsor: Judiciary committee

Requestor:

II. FISCAL DETAIL

Agency Affected: Administration

Program Category Affected: Central Adm. Svcs

BRU, Program of Subprogram(s) Affected:

Labor Relations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0		
CAPITAL						
REVENUE	0	0	0	0		

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Judy LivingstonDivision: Labor Relations

Phone: (907) 465-4044

Date: March 29, 1983Approved by Commissioner: Lisa RuddDepartment: ADMINISTRATIONDate: 4/7/83

Distribution:

Original to Legislative Finance

Copy to Office of Management and Budget (for Legislature introduced bills)

Copy to Department (for Governor introduced bills)

Copy to Sponsor

Copy to Requestor (if different from Sponsor)

3/8/83

POSITION PAPER
CS SB 55 (Judiciary)

This bill would add a new subsection to the Public Employment Relations Act providing: 1) for submission of a "proposed" collective bargaining agreement which has been "approved by the organization and the State" to the Legislature within ten (10) days "after the agreement of the parties", or ten (10) days after the regular session convenes; 2) that the Legislature is to consider the agreement's monetary terms; 3) that if the Legislature does not reject the monetary terms of the agreement by concurrent resolution within thirty (30) days of the agreement's submission the agreement may take effect.

Amendments to this bill have so altered it as to cause us to withdraw our conditional support for the original version. That support was based upon a belief that the underlying objective of the bill was a worthy one, and was achievable with minor modifications to the bill's language. But the committee substitute places the original objective out of reach.

We have two major concerns with the present version of the bill. First, we believe that the legislature may by the provisions of the bill, be unduly restricting its own actions. Second, the bill now seems to involve the legislature in the actual collective bargaining process! We strongly oppose any requirement that the parties submit a "proposed" agreement to the legislature for approval before actually entering into the agreement. Since the legislature's role is to fund or not fund the monetary terms of the agreement, legislative involvement prior to actual agreement would be premature.

Prepared By:

Guy Springham

Guy Springham, Director
Division of Labor Relations

Approved By:

Lisa Rudd

Lisa Rudd, Commissioner
Department of Administration

4/4/83
Date

4/7/83
Date

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

2/10/83

Date: 2/23/83

Mr. President:

The Committee on JUDICIARY has had SB 55

Relating to collective bargaining; eff. date

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- ☐ do pass ☐ do not pass
- ☐ do pass with attached amendments(s)
- ☒ replace with CS for SB 55 (Judiciary) ☒ same title ☐ new title
- and recommends _____
- ☒ AND attaches a "Letter of Intent" ☐ New Fiscal Note
- ☐ reports it back without recommendation
- ☐ referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Bill Ray

Paul Jones

[Signature]

[Signature]

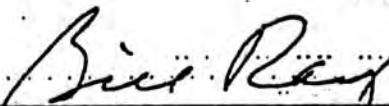
N/R - 3

Bill Ray
CHAIRMAN

Senate Judiciary Committee

Letter of Intent on SB 55

Before an organization and the state may enter into an agreement, the agreement proposed to be entered into shall be submitted to the legislature for consideration of the monetary terms of the agreement. Submittal of the proposed agreement to the legislature shall occur within ten (10) days after the proposed agreement of the parties has been reached, or ten (10) days after the convening of the next regular session. The monetary terms of the proposed agreement take effect if they are not rejected by the legislature by concurrent resolution within thirty (30) days after the agreement is submitted to the legislature.



Senator Bill Ray, Chairman

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 18, 1983

The Honorable Vic Fischer
Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CSSB 55 -- Collective
bargaining agreements
Our file no.: 366-612-83

Dear Senator Fischer:

In your letter of May 18, 1983, you have asked whether the procedures proposed in CSSB 55 to effectuate approval of a collective bargaining agreement raise constitutional concerns. As we discussed below, the bill raises substantial constitutional questions and, as a consequence, will almost undoubtedly foster extensive litigation. In light of the limited time available for our response and the complexity of the matter, we limit our response to identifying the legal questions posed by CSSB 55.

As you know, present law provides that the monetary terms of an agreement do not take effect without legislative approval. AS 23.40.215. In practical application, monetary terms take effect only when an appropriation to fund the agreement is adopted. The effective dates of other provisions in an agreement are not, however, contingent on legislative review and approval. CSSB 55 proposes, in contrast, that monetary terms of an agreement would take effect unless the legislature adopts within 30 days a concurrent resolution which disapproves of the monetary terms. Further, the effective date for other items in the agreement would be contingent on the monetary terms taking effect through legislative inaction.

We first question whether CSSB 55 proposes a permissible exercise of legislative powers. The novel feature of the legislation is the significance of the legislature's failure to

act. In State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980), the Alaska Supreme Court considered the constitutionality of a statute, AS 44.62.320(a), which provided for the annulment of administrative regulations through adoption of a concurrent resolution. The Court observed that "[t]he Alaska Constitution defines with specificity the mechanics of legislation. Each provision has a purpose 'designed to engender a responsible legislative process worthy of the public trust.'" Id. at 772, quoting Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979). With respect to the regulation annulment procedure at issue, the court concluded that the adoption of a concurrent resolution was an impermissible method to exercise legislative power. Indeed, since CSSB 55 infers legislative action through an absence of action, the bill arguably exacerbates the procedural deficiencies identified at length in A.L.I.V.E. Voluntary. Further, the A.L.I.V.E. Voluntary court also noted that where the legislature acts through the adoption of a concurrent resolution, the governor is deprived of an opportunity to exercise a veto of the legislative action. That concern is equally applicable to the procedures established under CSSB 55.

The bill also raises substantial questions with respect to the appropriation process. Article 9, section 13 of the Alaska Constitution provides that "no money shall be withdrawn from the treasury except in accordance with appropriations made by law." Clearly, legislative inaction cannot suffice to permit the expenditure of public money without an appropriation. The bill, therefore, should not be construed to permit a "de facto appropriation" of public money to fund the agreement. And, if the monetary terms of an agreement became effective through legislative inaction, the terms of any outstanding appropriations would be determinative of whether the executive branch had authority to expend public money to fund the agreement. Of course, as a practical matter the use of a preexisting appropriation may require the dismissal of public employees to provide sufficient money to fund the agreement. A related, and more difficult problem is that once the monetary terms are effective, contractual obligations are established. We cannot opine with any certainty what ramifications would follow were the state in the difficult posture of being subject to contractual obligations, yet without the requisite appropriation to enable the expenditure of public money. We note that it is arguable that the legislature's continuing obligation to fund the monetary terms of an agreement pursuant to AS 23.40.215 may, ultimately, be compromised in this instance.

Hon. Vic Fischer
CSSB 55 -- collective bargaining agreements
366-612-83

May 18, 1983
Page 3

If you have any further questions on this matter,
please feel free to call.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:

Jonathan B. Rubini
Jonathan B. Rubini
Assistant Attorney General

JBR:jb

cc: Honorable Bill Ray
Alaska State Legislature

Eleanor Andrews, Deputy Commissioner
Department of Administration