

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1375 SCOMM 51: BLUE RIBBON COMN. ON STATE PERSONNEL ACT 1978-1983



RECORDS CERTIFICATION



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James O. Smith
Signature of Camera Operator

12/15/89
Date

SCOMM

#51:26

July 1, 1983

CS HB 49 (SA): Nepotism in state employment

History - IN THE HOUSE

State Affairs: Hearings 1/26, 2/10, 2/22 and final passing out of committee on February 28.

Judiciary: Hearings 4/13 and 4/25. Rep. Bussell (and others - perhaps Rep. Liska?) wanted to try to address the relationship between non-married state employees living together. John Rubini of the AG's office pointed out that there could be constitutional problems related to invasion of privacy but said he would work on the question. Nothing happened after that.

John also said that the Division of Personnel may, contrary to the earlier AG's opinion, have authority to adopt nepotism regulations which are more comprehensive (and restrictive) than the nepotism statute, which (if it were true) would make this bill unnecessary.

Note: Senator Ray wanted, at one time, to try to include non-married people living in a marital-style relationship within the nepotism prohibitions. See my short note to him dated February 7th.

At one time, there was discussion of changing the language so that "close relatives" were prohibited from employment situations, rather than prohibiting "spouses or persons related by blood or marriage within and including the second degree of kindred" and then providing, in the bill, a definition of "close relatives." This might make the bill more readable, and could be pursued later if the bill goes anywhere.

A copy of the case which has been filed, challenging DOT's implementation of nepotism regulations, is enclosed. John Rubini said that it wasn't going anywhere, the last time I spoke with him about it. The case may be assigned to someone else.

Companion bill: SB 56 is identical to the original HB 49. It had no hearings last session, largely because Nancy Groshek, Sen. Vic Fischer's aide, does not believe in nepotism restrictions. From what I can tell, she is unlikely to change her mind.

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 25, 1983

*Clocksin - promotion
across dept lines*

The Honorable Charlie Bussell
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CS for HB 49
Our file no.: 366-568-83

Dear Representative Bussell:

This letter responds to the several questions relating to the nepotism restrictions proposed in the CS for HB 49, now pending before the House Judiciary Committee.

As discussed at the prior committee hearing, the state is presently a party to litigation which questions the permissible scope of any nepotism prohibition established under the Personnel Rules. Public Employees Local 71 v. State, Case No. 82-4931 Civ. (Third Judicial District). The complaint, filed in June 1982, alleges, in pertinent part, that the director of the division of personnel exceeded statutory authority in adopting Personnel Rule 13 09. The state's position in the litigation is that the personnel Rule was adopted under the authority of AS 39.25. At the present time, the parties are pursuing settlement negotiations.

A brief summary of the legal questions posed in the litigation may prove helpful to the committee. Directly at issue in the litigation is whether AS 39.25.150 confers the requisite statutory authority for the promulgation of any Personnel Rules which relate to a nepotism restriction. See AS 44.62.020. See also Kelly v. Zamarello, 486 P.2d 906, 910 n. 19 (Alaska 1971). If adoption of a nepotism restriction is authorized under AS 39.25, the inquiry turns to whether the rules are "in accordance with standard prescribed by other provision of law." AS 44.62.020. See Boehl v. Sabre Jet Room, Inc., 349 P.2d 585 (Alaska 1960). Our research has not as yet disclosed any Alaska case authority which offers a direct answer to whether it is per-

missible to adopt under the authority of the enabling statute a regulation which extends, but is not inconsistent with, the policy expressed in a separate statutory provision. Two factors may prove relevant were the litigation to proceed to a judicial resolution. First, regulations are typically accorded a presumption of validity. Alaska Intern Industries, Inc. v. Musarra, 602 P.2d 1240 (Alaska 1979). Second, the legislature has amended AS 39.25 subsequent to the enactment of AS 39.10.010, as recently as last session, presumably with knowledge of the long-standing nepotism prohibition in the Personnel Rules. However, since the matter is presently in litigation, any further comment on the merits of the pending litigation would be inappropriate. If, ultimately, the matter is not resolved in the immediate litigation, the Department of Law will review whether the director of personnel enjoys the authority to establish reasonable nepotism restrictions beyond the scope of AS 39.10.010. We are informed that in the interim the division of personnel does not intend to enforce Personnel Rule 13 09. See 1979 Inf. Att'y Gen. Op. (Feb. 13; J-66-191-79).

The committee also questioned whether any legislative action to amend AS 39.10.010 would unduly prejudice the state's position in the litigation. That the propriety of Personnel Rule 13 09 is questioned in pending litigation should not, in our view, impair the Legislature's ability to address this matter. Any inference drawn from the legislature's action or, alternatively, inaction would be speculative at best, and would not be a determining factor in the litigation. Moreover, an appropriate letter of intent would dispel whatever inference may be suggested due to prospective legislative reform.

The committee also raised several questions broadly relating to the scope of CSHB 49. The proposed bill establishes nepotism restrictions specific to state "department[s] or agenc[ies]." Absent specific statutory provision to the contrary, the nepotism restrictions would not apply, for example, to the appointment of members or employees of regulatory boards and commissions, such as those regulatory bodies established in Title 8 of the Alaska Statutes. Further, in its most expansive scope the restrictions concern only the relationship between a prospective employee and the commissioner, deputy commissioner or executive head of a particular agency or department. The bill does not, therefore, address the situation of a relationship between two persons not employed within the same department or agency. The example raised at the prior committee hearing, the appointment of a legislator's spouse or child to a position in a state agency or, for that matter, to a position on any legislator's personal staff, would not be within the ambit of the present bill. Of course, other rules adopted by the legislature to

Rep. Charlie Bussell
CSHB 49
366-568-83

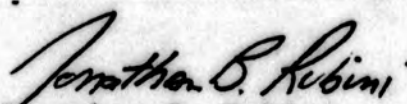
April 25, 1983
Page 3

manage internal affairs may address such a situation. Finally, a question was raised as to whether it would be appropriate to limit the coverage to persons related by blood or marriage. More specifically, the question concerned the possible extension of the nepotism prohibition to persons in a meretricious relationship. Without addressing any policy implications, we caution that amending the bill to obtain the contemplated policy objectives would render the legislation extremely vulnerable to challenge as violative of the constitutional guarantees to equal protection, due process and personal privacy.

Please let us know if we can offer any further assistance on this matter.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Jonathan B. Rubini
Assistant Attorney General

JBR:jb

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

RECEIVED
FEB 24 1983

STATE CAPITOL
JUNEAU, ALASKA 99811
907-461-3800

MEMORANDUM

February 24, 1983

SUBJECT: Nepotism
(HB 49)

TO: Representative Mitchell E. Abood, Jr.
Chairman, House State Affairs Committee

FROM: *LHA* Linn H. Asper
Legislative Counsel

You have asked whether the relationships included in the "second degree of kindred" as that term is defined in the proposed committee substitute for HB 49 are the same relationships that are traditionally associated with that phrase. The term "degree of kindred" is not defined in the Alaska Statutes. In other jurisdictions the "degree of kindred" between one person and another is normally determined as follows: Take the closest common ancestor of the two persons and count the generations back to that ancestor from each; each generation represents a degree of kindred. Thus, the first degree of kindred to a person includes the parents and children of that person, the second degree includes brothers and sisters, grandparents, and grandchildren, and the third degree includes nephews and nieces and aunts and uncles. In proposed CSHB 49 aunts and uncles are included within the definition of "second degree of kindred" although they would normally be considered to be in the "third degree of kindred". In other respects the statutory and common law definitions are the same.

It should be pointed out that since the definition of "second degree of kindred" in the proposed CSHB 49 only applies to the section in which it appears, the term can include any relationships that the legislature sees fit to include. You can also use a different term, such as "close relationship" if you feel that use of the traditional "degree of kindred" terminology will cause confusion.

LHA:ljb

Enclosure



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

February 21, 1983

TO: Linn Asper, Legislative Counsel

FROM: Teresa B. Cramer *Terry*
Administrative Assistant

SUBJECT: HB 49 - Relating to Nepotism in State Employment
Work Order 13-0396

The Department of Law has prepared a proposed committee substitute to HB 49 which need some changes. Since John Rubini is out of town, could you review the following changes and, if there is no problem with them, prepare a committee substitute for a hearing in State Affairs tomorrow afternoon? Thanks.

ADD TO LINE 26

The commissioner of the department or the executive head of the agency may not approve an appointment which places a person in a direct supervisory relationship to a spouse or a person within the second degree of kindred.

LINE 28 - Add paragraph (d):

(d) For purposes of this section, "second degree of kindred" includes father, mother, son, daughter, brother, sister, husband, wife, grandfather, grandmother, grandson, granddaughter, uncle and aunt including those involving half or step relationships.

1 IN THE _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 _____ BILL NO.

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 nepotism in state employment; and
7 providing for an effective date."

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

9 * Section 1. AS 39.10.010 is repealed and reenacted to read:

10 Sec. 39.10.010. NEPOTISM PROHIBITED. (a) The appointing au-
11 thority under AS 39.25.020 may not appoint a person to a position in a
12 state department or agency, if that person is the spouse of or is
13 related by blood or marriage within and including the second degree of
14 kindred to the commissioner or a deputy or assistant commissioner of
15 the principal department, or to the executive head of the agency.

16 (b) The appointing authority under AS 39.25.020 may not appoint
17 a person to a position in a division of a state department or agency,
18 if that person is the spouse of, or is related by blood or marriage
19 within and including the second degree of kindred to, the executive
20 head of the division.

21 (c) The appointing authority under AS 39.25.020 may not appoint
22 a person to a position in a state department or agency in the execu-
23 tive branch, if that person is the spouse of, or is related by blood
24 or marriage within and including the second degree of kindred to, an
25 ~~employee in the department or agency unless the appointing authority~~
commissioner of the department or executive head of the agency
26 approves the appointment in writing. ~~ADD~~ An appointment prohibited by (a)
27 or (b) of this section may not be approved under this subsection.

28 * Sec. ³⁴~~33~~. This Act takes effect immediately in accordance with AS 01.-
29 10.070(c).

Sec 2. Def. of ^{2nd degree of kindred} ~~appointing auth.~~ - from PR's

03-038

~~Sec 3. Pled adopt legs to implement~~

February 7, 1983

Senator Ray -

I looked for a definition for people living together but not married and came up with the following from AS 18.66.900(3):

"domestic violence" means a crime specified in AS 11.41 when the victim is a spouse or a former spouse of the defendant or a member of the social unit comprised of those living together in the same dwelling as the defendant.

I called the Council on Domestic Violence and Sexual Assault to ask whether they had anything which would explain "social unit." They don't but they are working on a definition and will let me know if they develop something satisfactory. Is this the language you were interested in adding to the nepotism statute?

Jerry

*2/8 - Hold for
hearing in committee*

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF PERSONNEL
February 2, 1983

BILL SHEFFIELD, GOVERNOR

POUCH C-0201
JUNEAU, ALASKA 99811-0201
(907) 465-4430

Honorable Mitch Abood
Chairman
House State Affairs Committee
Alaska State Legislature

Dear Mr. Chairman:

This is a follow up to my testimony given before the House State Affairs Committee on January 26, 1983. At your request I am reducing to writing some of my concerns about House Bill 49.

At the outset I wish to express my support for a nepotism bill for the Executive Branch of Government. At the present time AS 39.10.010 only prohibits spouses and close relatives of "... the executive head of a principal state department or agency..." from being employed. Therefore the need for additional prohibitions is obvious.

There are, however, some potential problems with House Bill 49 which I would like to point out:

1. Concepts of Nepotism - There are two concepts of nepotism, one of which should be decided on:
 - a. The Narrow Concept - Nepotism is the prohibition of a high official from using his or her influence to hire a spouse or other close relative.
 - b. The Broader Concept - Nepotism is the prohibition of spouses or close relatives working together.

Under the first concept, it would be permissible for two people to continue to work together provided they were married after being employed. Under the second broader concept, when two employees got married, one of them would have to quit because of apparent conflict of interest.

I recommend the narrower concept to allow people who meet on the job and decide to live together to have the choice of marriage.

It is my understanding that the phrase "A person may not be appointed..." incorporates the narrower concept only. I support this interpretation. However, I feel it is arguable. There-

FR/sjh

c.c. Teresa B. Cramer
Blue Ribbon Commission

Commissioner Lisa Rudd
Department of Administration

Members of Blue Ribbon Commission

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF ADMINISTRATION

DIVISION OF PERSONNEL
February 2, 1983

POUCH C-0201
JUNEAU, ALASKA 99811-0201
(907) 465-4430

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Chairman
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I recommend the narrower concept to allow people who meet on the job and decide to live together to have the choice of marriage.

It is my understanding that the phrase "A person may not be appointed..." incorporates the narrower concept only. I support this interpretation. However, I feel it is arguable. There-

fore, I recommend that the intent of the legislation be clear in the bill so that it will not be administered on the basis of an Attorney General's Opinion.

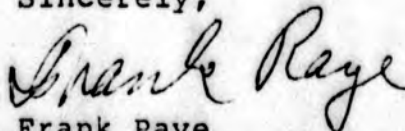
2. Possible conflict with Title 13 - Alaska law prohibits discrimination on the basis of marital status or change in marital status. To prohibit one from working with a spouse could be argued to be discrimination. The counter argument is that the discrimination is based on who a person is married to (that is a state employee) not on marital status per se (that is if a person is married or single). Again, I believe the argument should be settled prior to the adoption of the legislation.
3. Approval by the Director of Personnel - Paragraph C of House Bill 49 prohibits a person from being appointed to any executive branch, department or agency if they are the spouse or close relative to any other employee in that department or agency "...unless the director of personnel and the appointing authority approve the appointment in writing."

I recommend that language be changed to permit the executive head of a department or agency to give written approval. I see no need to have the Director of Personnel give approval. Furthermore, you may wish to state in the bill conditions under which commissioners and agency heads may give their approval. For example, it may be desirable to prohibit one spouse from supervising another.

4. Definition - I also suggest the bill provide a definition of "second degree of kindred". This is a term which, as I understand it, comes from probate law and which does in fact have a legal definition. However, that definition is not commonly understood nor readily available.

Thank you for the opportunity to give testimony before your committee and for considering these points. I will be glad to appear before you again to answer any questions or discuss any of these issues further.

Sincerely,



Frank Raye
Director

FR/sjh

c.c. Teresa B. Cramer
Blue Ribbon Commission

Commissioner Lisa Rudd
Department of Administration

Members of Blue Ribbon Commission

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

PUBLIC EMPLOYEES LOCAL 71,
AFL-CIO

Plaintiff,

vs.

STATE OF ALASKA; THE DIVISION
OF PERSONNEL, DEPARTMENT OF ADM-
MINISTRATION; KENNETH KARREN, in
his official capacity as DIRECTOR OF
THE DIVISION OF PERSONNEL; CAROL
BURGER, in her official capacity as
COMMISSIONER OF THE DEPARTMENT OF
ADMINISTRATION; THE BOARD OF PERSONNEL;
THE DEPARTMENT OF TRANSPORTATION,

Defendant



Civ. No. 82-4931

SUMMONS

To the above-named defendants:

You are hereby summoned and required to serve upon Kevin Dougherty, plaintiff's attorney, whose address is 2501 Commercial Drive, Box 899, Anchorage, Alaska 99510, an answer to the complaint which is herewith served upon you within 40 days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.



GOLDEEN GOODFELLOW
Clerk of Court

Clerk of the Court

By

R. Jordan
Deputy

DATED: 6.23.82

DIRECTOR'S OFFICE

JUN 25 1982

DIVISION OF
LABOR RELATIONS

KEVIN DOUGHERTY, ESQ.
ATTORNEY AT LAW
P. O. BOX 899
ANCHORAGE, ALASKA 99510
(907) 279-1640

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

PUBLIC EMPLOYEES LOCAL 71,
AFL-CIO

Plaintiff,

vs.

STATE OF ALASKA; THE DIVISION
OF PERSONNEL, DEPARTMENT OF ADM-
MINISTRATION; KENNETH KARREN ,in
his official capacity as DIRECTOR OF
THE DIVISION OF PERSONNEL; CAROL
BURGER, in her official capacity as
COMMISSIONER OF THE DEPARTMENT OF
ADMINISTRATION; THE BOARD OF PERSONNEL;
THE DEPARTMENT OF TRANSPORTATION,

Defendant

Civ. No.

82-4931

COMPLAINT

COMES NOW the plaintiff, Public Employees Local 71, AFL-CIO as
alleges as follows:

THE PARTIES;

1.(a) Plaintiff Public Employees Local 71 is a labor organization
certified, pursuant to A.S.23.40.100, as the exclusive collective bar-
gaining representative for all persons employed by the State of Alaska
within the Labor, Trades and Craft (LTC) unit.

(b) Defendant State of Alaska is a governmental body which
employs persons in the LTC unit for the purpose of discharging its
public functions.

(c) Defendant the Division of Personnel is a governmental agency
of the State charged with administering the State Personnel Act. A.S.39.25.

(d) Defendant Kenneth Kareen, the Director of the Division of
Personnel is a public officer charged with directing and supervising the

Division and also charged with promulgating personnel rules not inconsistent with the State Personnel Act and which are required to implement and administer that Act.

(e) Defendant Carol Burger, the Commissioner of Administration, is a public officer charged with reviewing the State personnel rules.

(f) Defendant Board of Personnel is a governmental agency of the State charged with final approval or disapproval of the State personnel rules.

(g) Defendant Department of Transportation is a governmental agency authorized to adopt personnel regulations pertaining to its employees and subject to the approval of the Director of Personnel. A.S.39.25.153.

2. On May 22, 1980, plaintiff and the State of Alaska entered into a collective bargaining agreement (attached hereto).

3. That the agreement provides for the fair and orderly distribution of employment opportunities with the State of Alaska for all qualified applicants. Article IV of that agreement states in part,"

PREFERENTIAL HIRING FACILITIES

1. The Union agrees to maintain preferential hiring facilities for the purpose of soliciting qualified workmen in order to fill all Employer referral requests. Except for promotions, demotions, transfers and emergency appointments, the Employer agrees to use such referral services and will call upon the Union to furnish all qualified workmen required. The Employer further agrees to notify the Union of all promotions, demotions, transfers and emergency appointments."

4. That Defendants have promulgated Personnel Rule 13.09.03 which states,"

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."

5. That Defendant Department of Transportation has promulgated Policy and Procedures No. 22-8002 (copy attached hereto).

6. Acting pursuant to such rules and its policies Defendants have rejected the applications for employment of;

Bonnie Francis on May 4, 1982,
Michael Hartman on May 10, 1982,
Chris Howath on May 10, 1982,
Sami Killian on May 13, 1982,
Darren Morfield on June 10, 1982,
Diane Taylor on May 26, 1982,
Darrel Thompson on June 26, 1982,
Randall Miller on May 24, 1982,
Rodney Brown, on June 1, 1982,
Blake Beaudoin, on May 5, 1982,

despite their qualifications for that employment opening with the State, based solely on said personnel rules and its policies.

7. That Edwardo Machuca was discharged from employment with defendant on May 21, 1982 based solely on said personnel rules and its policies.

8. That plaintiff has reason to believe that defendants will continue such unfair and restrictive practices pursuant to said personnel rules and its policies.

9. That the Defendants unreasonably broad definition of nepotism within such rules arbitrarily and capriciously precludes employment for qualified applicants.

10. That such personnel rules and regulations are contrary to very purpose of the State Personnel Act, as expressly set forth in A.S.39.25.010.

11. That the Director of Personnel has exceeded the statutory authority conferred upon him in A.S.39.25.050 by preparing such rules contrary and inconsistent with the purpose of the State Personnel Act.

12. That the Board of Personnel has exceeded the statutory authority conferred upon it in A.S.39.25.070 through its acts of adopting and approving said personnel rules.

13. That Personnel Rule 13.09.3 and Policy and Procedure No. 22-8002 exceed the narrow scope of the personnel rules as expressly prescribed in A.S.39.25.150.

14. That Personnel Rule 13.09.3 and Policy and Procedure No. 22-8002 has created a classification of persons based on kindred relationship which arbitrarily and unreasonably restricts plaintiffs employment opportunities.

15. That such classification violates the equal protection clause of Article 1 - 1 of the Alaska Constitution and of the Fourteenth Amendment of the U. S. Constitution.

16. That said regulations and policies arbitrarily and capriciously deprive qualified applicants of their rights to fair employment opportunities as bestowed upon them by the parties collective bargaining agreement.

17. That said regulations and policies violate the due process clause of Article 1 - 7 of the Alaska Constitution and of the Fourteenth Amendment of the U. S. Constitution.

WHEREFORE, Plaintiff prays for the following relief :

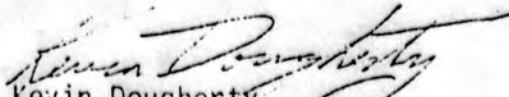
1. For a declaratory judgement entered that declares Personnel Rule 13.09.3 and Policy and Procedure no. 22-8002 invalid,

2. For injunctive relief, enjoining defendants their officers, agents, servants and employees from the use, enforcement or application of such regulations,

3. For judgement against defendants in the amount of back wages lost through defendants unlawful actions and policies.

4. For other relief as the Court may deem just and equitable.

Date this 23 day of June 1982 at Anchorage, Alaska.


Kevin Dougherty
Attorney for Plaintiff



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

March 2, 1983

TO: House Judiciary Committee

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

SUBJECT: Committee Substitute for House Bill 49 (State Affairs)
Nepotism in State Government

The existing statute prohibiting nepotism in state employment forbids only the employment of anyone related to the executive head of a department or agency. The statute states in full:

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. AS 39.10.010.

The Personnel Rule is more extensive, prohibiting the employment of relatives of the head of a division or subdivision within that division or subdivision. In addition, the Rule prohibits the employment of two related persons in the same agency unless express approval is given by both the appointing authority and the Director of Personnel. A copy of the Rule is attached.

The scope of the Personnel Rule is broader than the statutory authority granted in AS 39.10.010. The rule-making authority given to the Personnel Board by the State Personnel Act may not extend to nepotism, since the nepotism statute is not part of that Act. The Attorney General has advised the Division of Personnel that the nepotism rule exceeds the scope of statutory authority. A lawsuit has been filed challenging the Department of Transportation's implementation of nepotism prohibitions.

The Blue Ribbon Commission recommends that legislation prohibiting nepotism in state employment be adopted to provide statutory authority for the Personnel Rule. The prohibition against employing relatives does limit the opportunities for some Alaskans to find state jobs. The disadvantage to those people should be weighed against the appearance of impropriety and favoritism which is created by people working for a close relative who is a highly-placed state official.

Bill Analysis

Page 1 The first section of the Committee Substitute is based on the
Line 9 existing statute and Personnel Rule. The first paragraph
 prohibits the appointment of relatives or the spouse of the
 commissioner, assistant or deputy commissioner of a department
 or the relatives or spouse of an executive head of an agency.
 The reference to AS 39.25.020 means that the prohibition will
 extend to departments or agencies in all branches of government.

Paragraph (a) differs from the existing Personnel Rule and the statute by including reference to assistant and deputy commissioners and by its application to departments and agencies which are not part of the executive branch of government. It also differs by prohibiting the appointment rather than the employment of relatives. Prohibiting appointments of relatives permits people whose relationship is created (by marriage or adoption) after both are employed within a department to continue their employment even if one is the commissioner, deputy or assistant commissioner. However, the relative could not be promoted while related to the commissioner, since a promotion is an appointment to a higher position.

Line 16 Paragraph (b) prohibits the appointment of relatives of a division director to a position within that division. Like the first section, this prohibition extends to all branches of government through reference to AS 39.25.020.

Line 21 Paragraph (c) requires that before two relatives may be employed in the same department, the commissioner must approve the appointment in writing. This prohibition is limited to the executive branch.

Line 27 The commissioner may not approve an appointment if one of the people will be working in a direct supervisory relationship to the other spouse or relative.

Page 2 The commissioner may not approve an appointment which is
Line 1 prohibited by paragraphs (a) or (b).

Line 3 Paragraph (d) defines "second degree of kindred" as it is defined in the current Personnel Rule. The definition extends beyond the normal definition by including aunts and uncles,

who are usually defined as being third degree kindred. The definition applies only to the nepotism statute.)

"Second degree of kindred" is defined to include full, half, and step relationships. It does not include in-law relationships.

Line 7 The second section of the Committee Substitute provides for an immediate effective date.

TBC:lmk
Attachment

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.



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

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

MEMORANDUM

January 20, 1983

TO: House State Affairs Committee

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

SUBJECT: House Bill 49, Relating to Nepotism in State Employment

The existing statute prohibiting nepotism in state employment forbids only the employment of anyone related to the executive head of a department or agency. AS 39.10.010. The Personnel Rule is more extensive, prohibiting the employment of relatives of the head of a division or subdivision within that division or subdivision. In addition, the Rule prohibits the employment of two related persons in the same agency unless express approval is given by both the appointing authority and the Director of Personnel.

The scope of the Personnel Rule is broader than the statutory authority granted in AS 39.10.010. In addition, the rule-making authority given to the Personnel Board by the State Personnel Act may not extend to nepotism, since the nepotism statute is placed outside the Act. The Attorney General has advised the Division of Personnel that the nepotism rule may exceed the scope of statutory authority. A lawsuit has been filed challenging the Department of Transportation's implementation of nepotism prohibitions.

The Blue Ribbon Commission recommends that legislation prohibiting nepotism in state employment be adopted to provide statutory authority for the Personnel Rule. The prohibition against employing relatives does limit the opportunities for some Alaskans to find state jobs. The disadvantage to those people should be weighed against the appearance of impropriety and favoritism which is created by people working for a close relative. Problems can also arise if relatives are working in the same office so it is appropriate that the hiring decision be scrutinized with the potential for personnel problems in mind.

Bill Analysis

Page 1 The first section of the proposed legislation codifies the
Line 9 Personnel Rule. The first paragraph retains the existing
nepotism prohibition and extends it to include relatives of

deputy or assistant commissioners. The prohibition against employing a person related to the executive head of an agency applies to all legislative, judicial and executive branch agencies.

- Line 17 The second paragraph adds new language based on the Personnel Rule to prohibit appointment of a relative of the head of a division within that division. It applies to positions in the legislative, judicial or executive branch.
- Line 22 The third paragraph prohibits employment of two relatives within the same executive branch department or agency unless the appointing authority and the Director of Personnel approve the second appointment in writing.

In each of the paragraphs, relatives include spouses and persons within the "second degree of kindred", which the Personnel Rules define as:

father, mother, son, daughter, brother, sister,
husband, wife, grandfather, grandmother, grandson,
granddaughter, uncle and aunt including those
involving half or step relationships.

- Line 29 The second section of the proposed legislation provides for an immediate effective date.

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

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

1 IN THE HOUSE

2 HOUSE BILL NO. 49

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 nepotism in state employment; and
7 providing for an effective date."

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

9 * Section 1. AS 39.10.010 is repealed and reenacted to read:

10 Sec. 39.10.010. NEPOTISM PROHIBITED. (a) A person may not be
11 appointed to a position in a state department or agency, whether in
12 the legislative, judicial, or executive branch, if that person is the
13 spouse of or is related by blood or marriage within and including the
14 second degree of kindred to the commissioner or a deputy or assistant
15 commissioner of the principal department, or to the executive head of
16 the agency.

17 (b) A person may not be appointed to a position in a division of
18 a state department or agency, whether in the legislative, judicial, or
19 executive branch, if that person is the spouse of, or is related by
20 blood or marriage within and including the second degree of kindred
21 to, the executive head of the division.

22 (c) A person may not be appointed to a position in a state
23 department or agency in the executive branch, if that person is the
24 spouse of, or is related by blood or marriage within and including the
25 second degree of kindred to, an employee in the department or agency
26 unless the director of personnel and the appointing authority approve
27 the appointment in writing. An appointment prohibited by (a) or (b)
28 of this section may not be approved under this subsection.

29 * Sec. 2. This Act takes effect immediately in accordance with

Offered: 2/28/83
Referred: Judiciary

Original sponsor: Rules/Legislative
Council

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 49 (State Affairs)
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 nepotism in state employment; and
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12 a state department or agency, if that person is the spouse of or is
13 related by blood or marriage within and including the second degree of
14 kindred to the commissioner or a deputy or assistant commissioner of
15 the principal department, or to the executive head of the agency.
16 (b) The appointing authority under AS 39.25.020 may not appoint
17 a person to a position in a division of a state department or agency,
18 if that person is the spouse of, or is related by blood or marriage
19 within and including the second degree of kindred to, the executive
20 head of the division.
21 (c) The appointing authority under AS 39.25.020 may not appoint
22 a person to a position in a state department or agency in the execu-
23 tive branch, if that person is the spouse of, or is related by blood
24 or marriage within and including the second degree of kindred to, an
25 employee in the department or agency unless the commissioner of the
26 department or the executive head of the agency approves the appoint-
27 ment in writing. The commissioner of the department or the executive
28 head of the agency may not approve an appointment under this sub-
29 section that places a person in a direct supervisory relationship to a



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

December 14, 1982

TO: Members of the Blue Ribbon Commission

FROM: Teresa B. Cramer *Terry*
Administrative Assistant

SUBJECT: Nepotism Regulations

I received a telephone call from a state employee concerning the effect of nepotism regulations. She reported that a man wanted to work for the Juneau Job Service Office but was told that he could not while his niece by marriage was employed there as a secretary. She had recently moved to Juneau and he had met her only a few weeks before. The niece found another secretarial position so he was hired. There would not have been a direct supervisory relationship between the man and his niece. The caller also said that she had thought of transferring from Juneau to Ketchikan but that she could not because her sister-in-law already worked in the Job Service Office there. She did not believe their personal relationship would have affected their work.

The Personnel Rules permit the departmental appointing authority and the Director of Personnel to waive the prohibition in these situations. Apparently the Job Service Center policy was against requesting nepotism waivers.

She has observed, however, that personal relationships can cause employee problems. A person and his mistress were employed in an office where she worked and when they were having a quarrel outside work it affected their behavior at work and caused tension in the whole office. Nepotism regulations do not address this situation at all.

TBC:lmk

Offered: 2/28/83
Referred: Judiciary

Original sponsor: Rules/Legislative
Council

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 49 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
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13 related by blood or marriage within and including the second degree of
14 kindred to the commissioner or a deputy or assistant commissioner of
15 the principal department, or to the executive head of the agency.

16 (b) The appointing authority under AS 39.25.020 may not appoint
17 a person to a position in a division of a state department or agency,
18 if that person is the spouse of, or is related by blood or marriage
19 within and including the second degree of kindred to, the executive
20 head of the division.

21 (c) The appointing authority under AS 39.25.020 may not appoint
22 a person to a position in a state department or agency in the execu-
23 tive branch, if that person is the spouse of, or is related by blood
24 or marriage within and including the second degree of kindred to, an
25 employee in the department or agency unless the commissioner of the
26 department or the executive head of the agency approves the appoint-
27 ment in writing. The commissioner of the department or the executive
28 head of the agency may not approve an appointment under this sub-
29 section that places a person in a direct supervisory relationship to a

1 spouse or to a person within the second degree of kindred, or that is
2 prohibited by (a) or (b) of this section.

3 (d) In this section "second degree of kindred" includes a
4 father, mother, son, daughter, brother, sister, grandfather, grand-
5 mother, grandson, granddaughter, uncle, or aunt in a full, half, or
6 step relationship.

7 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
8 10.070(c).



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

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She has observed, however, that personal relationships can cause employee problems. A person and his mistress were employed in an office where she worked and when they were having a quarrel outside work it affected their behavior at work and caused tension in the whole office. Nepotism regulations do not address this situation at all.

TBC:lmk

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

P & F No.

22-8002

1 OF 3

Effective Date

5/26/82

SUBJECT

CONTROL OF NEPOTISM WAIVERS

Supersedes P & F No.

22-8002

Dated

3/1/82

APPROVED BY

[Signature]

DIVISION

Support Services

SECTION

Personnel

CHAPTER TITLE

General

PURPOSE:

To establish a standard procedure to control the approval of nepotism waivers for all employees of this Department, including employees of Marine Highways.

POLICY:

It is the policy of this Department to not hire or commit to hire employees which require a nepotism waiver prior to its approval. It is further the Department's policy to approve all legal waivers where employees are not in the same division. Requests for nepotism waivers for employees within the same division are not encouraged; however, it is recognized that in areas where we have critical shortages of candidates in certain job classifications, it may be necessary; this will normally be a last resort consideration after all other possibilities have been explored. Under no circumstances will we consider the hire of relatives within and including the second degree of kindred (see Personnel Rule No. 1) who would have a direct supervisory/subordinate relationship.

DISTRIBUTION:

All holders of the Policy and Procedures Manual and posting on bulletin boards to the extent of insuring proper notice to all employees of this Department.

PROCEDURE:

Request for nepotism waiver for a position is initiated by completing the form shown on page 2 for classified positions or the form shown on page 3 for vessel employees. Care will be taken to be sure that justification for hire is logical and adequate. If the request is for nepotism within a division, the justification must explain the extraordinary circumstances which necessitate the request and must indicate that no supervisory/subordinate relationship exist or is likely to exist in the future.

After initiation and signing by immediate supervisors, the form will be processed through normal administrative channels to the Deputy Commissioner for the unit wanting to hire the new employee. The form should then be submitted to the Department Personnel Officer who will be responsible for forwarding approved requests for classified positions to the Division of Personnel for final approval. If time is of the essence and the Deputy Commissioner has delegated the authority, request may be made for non-intra divisional waivers by a telephone call to the Department Personnel Officer who will prepare the form and secure final approval.

Requests denied will be returned indicating reasons therefore. Requests for vessel employees will be returned to the Division of Marine Highways indicating approval or denial. A copy of each approved nepotism waiver will be placed in each employee file.

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

P & P No. 22-8002	Page 1 OF 3
Effective Date 5/26/82	
Supersedes P & P No. 22-8002	Dated 3/1/82
APPROVED BY <i>[Signature]</i>	

SUBJECT

CONTROL OF NEPOTISM WAIVERS

DIVISION

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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.

James O. Smith
Signature of Camera Operator

12/15/89
Date

SCOMM

#51:27

July 6, 1983

HB 50: Collective Bargaining

History - IN THE HOUSE

L & C

I met with staff of the committee (Steve Levy?) on 1/26. He suggested that there be some provision added to the bill to insure that there would be floor action on approval or disapproval of a collective bargaining contract, rather than permitting inaction by the legislature to indicate anything. He suggested looking at the Sunset provisions as an example of how to do that. Senator Ray was not enthused so I did not pursue the suggestion. No hearings were held in committee.

Companion bill: SB 55 is the companion and has been amended (CS), passed the Senate, passed House Labor & Commerce, which adopted its own CS, and is in House Finance.

February 1, 1983

Senator Ray -

I met with a staff person for House Labor and Commerce to talk about the Blue Ribbon Commission bills which are in their committee. He suggested that the collective bargaining bill include some provision to insure that any resolution disapproving a labor agreement actually makes its way through the committee process and is voted on by the whole body. The sunset laws may provide an example for doing that. They require that

(d) As to each board, commission, or agency program assigned to it for purposes of review, the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of the house. (AS 44.66.050)

Shall I follow up on this idea?

Jerry

Introduced: 1/18/83
Referred: Labor & Commerce,
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 HOUSE. ✓

2 HOUSE BILL NO. 50

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) 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).

20

after the agreement is referred to it
negotiated agreement
(d) As to each board, commission, or agency program assigned to it for purposes of review, the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of the house. The report shall contain a summary of the findings of the committee as to the compliance of the board, commission or program with the factors enumerated in (c) of this section, together with a summary or recommendations of the committee as to each of the following:

- (1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;
- (2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;
- (3) an identification of any other programs having similar, conflicting or duplicate objectives;
- (4) an assessment of alternative methods of achieving the purposes of the program;
- (5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;
- (6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts; and
- (7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

(e) The committee of reference may introduce a bill providing for the reorganization or continuation of the board, commission or agency program. No more than one board, commission, or agency program shall be continued or reestablished in any legislative bill, and the board, commission, or agency program shall be mentioned in the title of the bill. (§ 3 ch 149 SLA 1977)

Sec. 44.66.060. Existing claims. This chapter shall not cause the termination or dismissal of a claim or right of a citizen against a board, commission or program of an agency terminated under this chapter which is subject to litigation. Claims and rights shall be assumed by the department to which the board or commission terminated under this chapter was attached for administrative purposes. (§ 3 ch 149 SLA 1977)

The fourth 1980 amendment added paragraph (8) of subsection (a).

The fifth 1980 amendment added paragraph (9) of subsection (a).

Sec. 44.66.020. Agency programs. (a) Agency programs and activities listed in this subsection which are specifically designated as provided in AS 44.66.030 are subject to termination during the regular legislative session convening in the month and year set out after each:

(1) programs in the budget categories of general government, public protection, and administration of justice — January, 1980;

(2) programs in the budget categories of education and the University of Alaska — January, 1981;

(3) programs in the budget categories of health and social services — January, 1982;

(4) programs in the budget categories of natural resources management, development and transportation — January, 1983.

(b) An agency program or activity designated in (a) of this section shall be subject to termination during the regular legislative session convening four years after the preceding review and may be subject to termination at any time upon the recommendation of the Legislative Budget and Audit Committee and the concurrence of the legislature as if under AS 44.66.030. (§ 3 ch 149 SLA 1977)

Sec. 44.66.030. Program identification. During the legislative session preceding each of the years set out in AS 44.66.020, the Legislative Budget and Audit Committee shall designate, not later than March 1 of those years, the programs and activities within each program category which shall be subject to termination in the next fiscal year. The recommendations of the Legislative Budget and Audit Committee shall be submitted to the respective houses of the legislature in the form of a bill which, if enacted into law, would terminate those designated programs and activities on or before July 1 of the following year. (§ 3 ch 149 SLA 1977)

Sec. 44.66.050. Legislative oversight. (a) Before the termination, dissolution, continuation or reestablishment of a board or commission under AS 08.03.010 or AS 44.66.010, or of an agency program under AS 44.66.020 and 44.66.030, a committee of reference of each house, which shall be the standing committee of legislative jurisdiction as provided in the Uniform Rules of the Legislature, shall hold one or more hearings to receive testimony from the public, the commissioner of the department having administrative responsibility for each named board, commission, or agency program, and the members of the board or commission involved. The hearings may be joint hearings. The committee shall also consider the proposed budget of the board, commission, or agency program, prepared in accordance with AS 37.07.050(f), and the performance audit of the activities of the board, commission, or agency program, prepared by the legislative audit division as prescribed in AS 24.20.271(1). The committee may consider

any other report of the activities of the board, commission or program, including but not limited to annual reports, summaries prepared by the Legislative Affairs Agency, and any evaluation or general report of the manner of conduct of activities of the board, commission, or agency program prepared by the office of the ombudsman.

(b) During a public hearing, the board, commission or agency shall have the burden of demonstrating a public need for its continued existence or the continuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

(c) A determination as to whether a board or commission or agency program has demonstrated a public need for its continued existence shall take into consideration the following factors:

(1) the extent to which the board, commission or program has operated in the public interest;

(2) the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters;

(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest;

(4) the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service; economy of service, and availability of service which it has provided;

(5) the extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions;

(6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved;

(7) the extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;

(8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest; and

(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Introduced: 1/18/83
Referred: Labor & Commerce,
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 HOUSE

2

HOUSE BILL NO. 50

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) 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).

20



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

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

M E M O R A N D U M

January 25, 1983

TO: House Labor and Commerce Committee

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

SUBJECT: House Bill 50 - 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 Act does not set out how the legislative review should occur.

The Blue Ribbon Commission has discussed the problems which can arise if the Legislature fails to act expeditiously on collective bargaining agreements submitted to it. Delay followed by legislative rejection can preclude the parties from completing any renegotiations before the Legislature adjourns. There would then be no funding for the new agreement and the Legislature might have to convene in special session, an expensive alternative.

The commission recommends that legislation be adopted which would encourage prompt legislative review of collective bargaining agreements.

Bill Analysis

Page 1
Line 9

The first section of the proposed legislation requires that negotiated agreements be submitted to the Legislature within 10 days of signing by the parties and that the Legislature have 30 days to review the monetary terms. If the Legislature finds the terms unacceptable, then it may reject the agreement by concurrent resolution. If the Legislature fails to act within 30 days, then the contracts will be considered to have legislative approval. The proposed legislation does not address the introduction or passage of an appropriation bill funding the agreements.

Line 18

The second section of the bill contains an immediate effective date clause.



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

#51:28

July 6, 1983

HB 51: Limiting the adjustment of retirement benefits

History - IN THE HOUSE

L & C

Hearing 2/7 and 3/25. At first hearing, Ken Humphreys, Director of Retirement & Benefits, testified that current law provides that the boards of retirement may waive collection of an overpayment where there is hardship. He added that in fact, the boards have been generous in waiving overpayments (as they have been). Committee staff urged passage of the bill & compared its provisions to federal requirements which are imposed on private pension funds.

State Affairs

Hearing 4/29. The Senate version, SB 57, arrived in State Affairs just before the hearing, and the committee acted on that bill rather than this one.

Companion bill: CS SB 57 is the companion and is the one which moved out of House State Affairs. This bill is therefore inactive. The administration prefers CS SB 57 to the original bill.

Introduced: 1/18/83
Referred: Labor & Commerce,
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 HOUSE

2 HOUSE BILL NO. 51

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act limiting the adjustment of retirement bene-
7 fits; and providing for an effective date."

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

9 * Section 1. AS 14.25.173 is amended by adding a new subsection to
10 read:

11 (b) An adjustment that requires repayment of benefits may not be
12 made under this section if

13 (1) the incorrect benefit was first paid two years or more
14 before the member or teacher or beneficiary was notified of the change
15 or error; and

16 (2) the change or error was not caused by the member or
17 teacher or beneficiary.

18 * Sec. 2. AS 39.35.520 is amended by adding a new subsection to read:

19 (b) An adjustment that requires repayment of benefits may not be
20 made under this section if

21 (1) the incorrect benefit was first paid two years or more
22 before the employee or beneficiary was notified of the change or
23 error;

24 (2) the change or error was not caused by the employee or
25 beneficiary; and

26 (3) the change or error relates to the employee's credited
27 service with the state and does not relate to credited service with
28 another participating employer.

29 * Sec. 3. This Act is retroactive to July 1, 1979.

1 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT & BENEFITS

POUCH CR

JUNEAU, ALASKA 99811

Public Employees' Retirement System
Teachers' Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Territorial Retirement System
Retirees' Voluntary Dental-Vision-Audio Plan
Supplemental Benefits System
Group Health/Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

Bill Sheffield, Governor

(907) 465-4460

May 13, 1983

Honorable Mitchell Abood, Jr.
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Abood:

You requested further written clarification of the Department of Administration's position on HB 51. The department, as well as the Public Employees' and Teachers' Retirement Boards, feel that adequate and equitable mechanisms already exist (AS 14.25.175 and AS 39.35.522) to grant relief in the form of waivers of adjustments to retirees who have been overpaid as a result of errors.

However, if the legislature feels that some change is appropriate, we feel that two major deficiencies in HB 51 should be addressed. First, the bill would prevent recovery of an overpayment even if the recipient of the overpayment knew or had reason to know an error had occurred. The language on page 1, lines 16 and 17 and on page 2, lines 8 and 9 of the attached CSSB 57 addresses this problem. Second, HB 51 makes no provision for oversight by the boards or for a hearing by the boards if it appears that a waiver of overpayment may not be justified. The language on page 1, lines 18-29 and on page 2, lines 10-21 of CSSB 57 addresses this problem.

Please let us know if you need further information.

Sincerely,


J.K. Humphreys
Director

JKH/jb
Enclosure

cc: Members of the HSA Committee
Eleanor Andrews
Cynthia Halterman

Offered: 4/26/83
Referred: Rules

Original sponsor: Rules/Legislative Council

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 57 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act limiting the adjustment of retirement bene-
7 fits; and providing for an effective date."

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

9 * Section 1. AS 14.25.173 is amended by adding new subsections to read:

10 (b) An adjustment that requires the recovery of benefits may not
11 be made under this section if

12 (1) the incorrect benefit was first paid two years or more
13 before the member or beneficiary was notified of the error;

14 (2) the error was not the result of erroneous information
15 supplied by the member or beneficiary; and

16 (3) the member or beneficiary did not have reasonable
17 grounds to believe that the amount of the benefit was in error.

18 (c) At each regularly scheduled meeting of the Teachers' Retirement
19 Board, the administrator shall report to the board on all sit-
20 uations since the administrator's last report in which an adjustment
21 has been prohibited under (b) of this section. If the board finds
22 that there is reason to believe that one or more of the conditions set
23 out in (b) of this section have not been met, the administrator shall
24 notify the member or beneficiary that an adjustment will be made to
25 recover the overpayment. A member or beneficiary who receives notice
26 of adjustment under this subsection may appeal to the board for a
27 waiver of the adjustment under AS 14.25.175. An adjustment that
28 requires the repayment of benefits may not be required while the
29 appeal is pending.

1 * Sec. 2. AS 39.35.520 is amended by adding new subsections to read:

2 (b) An adjustment that requires the recovery of benefits may not
3 be made under this section if

4 (1) the incorrect benefit was first paid two years or more
5 before the member or beneficiary was notified of the error;

6 (2) the error was not the result of erroneous information
7 supplied by the member or beneficiary; and

8 (3) the member or beneficiary did not have reasonable
9 grounds to believe that the amount of the benefit was in error.

10 (c) At each regularly scheduled meeting of the Public Employees'
11 Retirement Board, the administrator shall report to the board on all
12 situations since the administrator's last report in which an
13 adjustment has been prohibited under (b) of this section. If the
14 board finds that there is reason to believe that one or more of the
15 conditions set out in (b) of this section have not been met, the
16 administrator shall notify the member or beneficiary that an
17 adjustment will be made to recover the overpayment. A member or
18 beneficiary who receives notice of adjustment under this subsection
19 may appeal to the board for a waiver of the adjustment under
20 AS 39.35.522. An adjustment may not be required while the appeal is
21 pending.

22 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
23 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

April 14, 1983

TO: House State Affairs Committee

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

SUBJECT: House Bill 51 - Limiting the Adjustment of Retirement Benefits

Retired state employees may have substantial difficulties if they are required to repay retirement benefits improperly received because of errors made by the Division of Retirement and Benefits or because of a change in law. The commission is proposing legislation to limit the authority of the division to collect amounts paid improperly through no fault of the beneficiary or retired person if the error is not corrected within two years.

One woman testified to the commission that before she retired she asked the division to verify her years of credited service. Several years later a court-ordered change in retirement regulations reduced the number of years for which she received credit. Her employment with the University of Alaska could no longer be counted as credited service in PERS. As a result she had received more than \$5000 in benefits to which she was not entitled. The division reduced her benefit to the correct amount and began withholding an additional \$100 per month to be applied to the overpayment. She appealed to the Public Employees Retirement Board asking that collection of the overpayment be waived. The Board agreed.

Both the Public Employees' Retirement Board and the Teachers' Retirement Board have authority to waive collection of overpayments, but the uncertainty of an appeal can cause considerable stress to people on fixed incomes. Both boards are required to determine whether there would be undue hardship imposed by requiring repayment. AS 14.25.175 and AS 39.35.522. In establishing whether there is financial hardship, the entire family financial situation is considered, not just the resources of the petitioner.

The commission recommends that a two-year statute of limitations be placed on the collection of overpayments which resulted from errors which were not caused by the retired state employee. Two years provides ample opportunity for the division to audit its records and correct any errors. After that period, a retired person should not be required to repay benefits erroneously received if he or she did not cause the error. The division would still correct the amount of future benefits paid to the retired person.

Bill Analysis

- | | |
|------------------|---|
| Page 1
Line 9 | The first section of the proposed legislation adds the two-year statute of limitations to the Teachers' Retirement System. |
| Line 18 | The second section adds the same provision to the Public Employees' Retirement System. The amendment to PERS is applied only to state employees because the Blue Ribbon Commission considered that requiring other participating employers to pay for errors made by the state was inappropriate. |
| Line 29 | The third section makes the bill effective retroactively to July 1, 1979, in order to apply to those individuals whose situations came to the commission's attention. |
| Page 2
Line 2 | The fourth section of the bill contains an immediate effective date clause. |



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

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

MEMORANDUM

January 25, 1983

TO: House Labor and Commerce Committee

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

SUBJECT: House Bill 51 - Limiting the Adjustment of Retirement Benefits

On several occasions the Blue Ribbon Commission has heard testimony about problems created by overpayments of retirement benefits. Retired state employees may have substantial difficulties if they are required to repay retirement benefits improperly received because of errors made by the Division of Retirement and Benefits or because of a change in law. The commission is proposing legislation to limit the authority of the division to collect amounts paid improperly through no fault of the beneficiary or retired person if the error is not corrected within two years.

One woman testified to the commission that before she retired she asked the division to verify her years of credited service. Several years later a court-ordered change in retirement regulations reduced the number of years for which she received credit. Her employment with the University of Alaska could no longer be counted as credited service in PERS. As a result she had received more than \$5000 in benefits to which she was not entitled. The division reduced her benefit to the correct amount and began withholding an additional \$100 per month to be applied to the overpayment. She appealed to the Public Employees Retirement Board asking that collection of the overpayment be waived.

Both the Public Employees' Retirement Board and the Teachers' Retirement Board have authority to waive collection of overpayments, but the uncertainty of an appeal can cause considerable stress to people on fixed incomes. Both boards are required to determine whether there would be undue hardship imposed by requiring repayment. AS 14.25.175 and AS 39.35.522. In establishing whether there is financial hardship, the entire family financial situation is considered, not just the resources of the petitioner.

The commission recommends that a two-year statute of limitations be placed on the collection of overpayments which resulted from errors which were not caused by the retired state employee. Two years provides ample opportunity for the division to audit its records and correct any errors. After that period, a retired person should not be required to repay benefits erroneously received if he or she did not cause the error. The division would still correct the amount of future benefits paid to the retired person.

Bill Analysis

- | | |
|------------------|---|
| Page 1
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| Line 29 | The third section makes the bill effective retroactively to July 1, 1979, in order to apply to those individuals whose situations came to the commission's attention. |
| Page 2
Line 2 | The fourth section of the bill contains an immediate effective date clause. |



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.

James O. Smith
Signature of Camera Operator

12/15/89
Date

SCOMM

#51:29

July 6, 1983

HB 52: Government interests in intellectual work products developed at the expense of the state.

History - IN THE HOUSE

Judiciary This bill had no hearings in the House. •

Note: The Council on Science and Technology, which the bill makes responsible for carrying out the protection of the state's interest in patents, copyrights and trademarks, has been drastically reshaped by the legislature this session. If this bill goes anywhere, some alternative may have to be found for carrying out the functions assigned to the Council.

Companion bill: SB 59 is the companion. It had one hearing in committee and I met with Suzanne Tryck (Senator Vic Fischer's aide on this bill) several times to discuss problems. She indicated that the committee would be working on the bill during the interim.

Introduced: 1/18/83
Referred: Judiciary 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 HOUSE

2

HOUSE BILL NO. 52

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 government interests in intellectual work products developed at the expense of the state."

7

8

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

10

* Section 1. AS 39 is amended by adding a new chapter to read:

11

CHAPTER 52. INTELLECTUAL PROPERTY DEVELOPED AT THE EXPENSE OF THE STATE.

12

Sec. 39.52.010. RIGHT TO INTELLECTUAL WORK PRODUCT. (a) Except

13

as provided in AS 39.52.040 and AS 14.40.345, all right, title, and

14

interest in and to an intellectual work product of any kind that is

15

subject to the trademark, copyright, or patent laws of the United

16

States or this state or any foreign country that is developed by a

17

public officer or employee or a person under contract with the state

18

is the property of the state if developed

19

(1) during working hours;

20

(2) with the contribution of the state beyond what is

21

available to the public in general in the form of facilities, equip-

22

ment, materials, money, or information, or of time or services of

23

another public officer or employee in the course of state employment

24

or another person under contract with the state; or

25

(3) in connection with the official duties of the public

26

officer or employee or the person under contract, including but not

27

limited to circumstances in which the public officer or employee or

28

the person is employed or assigned to

29

(A) produce or improve an intellectual work product;

1 (B) conduct or perform research, development work, or
2 both;

3 (C) supervise, direct, coordinate, or review state
4 financed or conducted research, development work, or both; or

5 (D) act in a liaison capacity among governmental or
6 nongovernmental agencies or individuals engaged in such work.

7 (b) If a public officer or employee or a person under contract
8 with the state develops an intellectual work product that is the
9 property of the state, the developer is obligated to

10 (1) fully and promptly disclose the intellectual work
11 product to the Alaska Council on Science and Technology (AS 44.21.-
12 241);

13 (2) assign to the state the entire right, title, and inter-
14 est in and to the intellectual work product if not already waived by
15 signing of a general waiver upon commencement of employment in accor-
16 dance with AS 39.05.160 or as part of a contract for services; and

17 (3) upon request by the council, execute and reasonably
18 assist in the prosecution of an application for a trademark, copy-
19 right, or patent.

20 (c) If the state has a right to an intellectual work product
21 under (a) of this section but the council decides that it is inadvis-
22 able to prosecute an application for trademark, copyright, or patent,
23 the council, on behalf of the state, may, after consultation with
24 affected state agencies,

25 (1) waive all right, title, and interest in and to the
26 intellectual work product; or

27 (2) waive all right, title, and interest in and to a trade-
28 mark, copyright, or patent but reserve a nonexclusive, irrevocable,
29 royalty-free license in the intellectual work product with power to

1 grant licenses for all governmental purposes.

2 Sec. 39.52.020. COUNCIL AUTHORIZED TO GRANT MONETARY RECOGNITION
3 FOR CREATION OF INTELLECTUAL WORK PRODUCT. (a) The council is autho-
4 rized to give monetary recognition to a public officer or employee who
5 develops an intellectual work product that is the property of the
6 state and who discharges the obligations set out in AS 39.52.010.

7 (b) The council shall determine the guidelines, terms, and
8 conditions, as well as amount, source, distribution, and manner of
9 payments under (a) of this section. The council shall consider the
10 actual or potential value of the intellectual work product in terms of
11 revenue or reduced operating costs to the state.

12 Sec. 39.52.030. ARBITRATION OF DISAGREEMENTS. (a) Disagree-
13 ments between a public officer or employee or a person under contract
14 with the state and the council pertaining to ownership of an intellec-
15 tual work product or obligations of the respective parties shall be
16 disposed of by

17 (1) voluntary arbitration of all relevant issues, if the
18 disagreeing parties agree to be bound by the decision upon arbitra-
19 tion;

20 (2) compulsory arbitration if that is provided for in any
21 applicable contract between the disagreeing parties; or

22 (3) recourse to the court if arbitration cannot be resorted
23 to.

24 (b) The council is authorized to make contracts for compulsory
25 arbitration on behalf of the state.

26 (c) If arbitration is used to settle disagreements, the provi-
27 sions of AS 09.43 (Uniform Arbitration Act) shall govern.

28 Sec. 39.52.040. EXCEPTIONS. The provisions of this chapter do
29 not apply to a public officer or employee associated with or a person

1 under contract with the University of Alaska. Those persons shall be
2 governed by the provisions of AS 14.40.345. The provisions of this
3 chapter do not apply to a member of the legislature.

4 Sec. 39.52.050. ADOPTION OF RULES. The council may adopt rules
5 implementing the provisions of this chapter in accordance with the
6 Administrative Procedure Act (AS 44.62).

7 Sec. 39.52.099. DEFINITIONS. As used in this chapter, unless
8 the context otherwise requires,

9 (1) "council" means the Alaska Council on Science and Tech-
10 nology established in AS 44.21.241;

11 (2) "intellectual work product" means any product of the
12 mind including but not limited to the following:

13 (A) discovery, invention, or idea;

14 (B) process, system, or method;

15 (C) machine, manufacture, or product;

16 (D) composition of matter;

17 (E) design or composition in letters, art, or graph-

18 ics;

19 (F) literary, dramatic, musical, educational, or
20 artistic work;

21 (G) certification mark, trademark, patent, or copy-
22 right.

23 * Sec. 2. AS 14.40 is amended by adding a new section to read:

24 Sec. 14.40.345. INTELLECTUAL PROPERTY DEVELOPED AT THE EXPENSE
25 OF THE UNIVERSITY. All right, title, and interest in and to an intel-
26 lectual work product developed by a public officer or employee associ-
27 ated with or a person under contract with the University of Alaska is
28 the property of the university in accordance with a general policy
29 established by the university. The policy adopted by the University

1 of Alaska may provide for ownership, control, management, and disposal
2 of intellectual work products by an independent foundation created for
3 the purpose of obtaining intellectual work products, receiving gifts,
4 administering or disposing of interests in intellectual work products,
5 and promoting research.

6 * Sec. 3. AS 39.05 is amended by adding a new section to read:

7 ARTICLE 5. WAIVER OF RIGHT TO INTELLECTUAL PROPERTY.

8 Sec. 39.05.160. WAIVER OF RIGHT TO INTELLECTUAL PROPERTY. (a)

9 A public officer or employee of the state, before engaging in the
10 duties of the office or employment, shall sign a waiver of all right,
11 title, and interest in and to an intellectual work product that may be
12 developed by the officer or employee at the expense of the state as
13 set out in AS 39.52.

14 (b) Notwithstanding the requirement in (a) of this section, the
15 state, in accordance with AS 39.52.020, may share a portion of the
16 resulting revenue with or grant a cash award for resulting reductions
17 in operating costs to a public officer or employee who develops an
18 intellectual work product at the expense of the state.

19 (c) A public officer or employee may be required to sign, before
20 engaging in the duties of the office or employment, an acknowledgement
21 that the public officer or employee will not receive a share of the
22 revenue or reduction in operating costs attributable to an intellec-
23 tual work product developed as a duty of the office or employment.

24 (d) The waiver under (a) of this section and the acknowledgement
25 under (c) of this section are not considered terms and conditions of
26 employment that are subject to negotiation for purposes of collective
27 bargaining under the Public Employment Relations Act (AS 23.40).

28 * Sec. 4. AS 44.21.242(b) is amended by adding new paragraphs to read:

29 (9) consistent with the provisions of AS 39.52, retain,

1 assign, license, transfer, sell, or otherwise dispose of, in whole or
2 in part and upon terms that the council may direct, any and all rights
3 to, interests in, or income from intellectual work products acquired
4 by the council under AS 39.52;

5 (10) adopt rules implementing the provisions of AS 39.52.

6 * Sec. 5. AS 37.12.070(9) and AS 46.12.110(10) are repealed.



JUNEAU, ALASKA

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

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

M E M O R A N D U M

January 25, 1983

TO: House Judiciary Committee

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

SUBJECT: House Bill 52 - Government Interests in Intellectual Work
Products Developed at the Expense of the State

The Blue Ribbon Commission is proposing legislation to create and protect the state's interest in inventions, discoveries and creations developed by state employees or contractors during their employment or developed with the use of state facilities or resources.

The commission became interested in the issue when an employee of the Department of Fish and Game testified about employment problems arising from his patenting of a production scale salmon incubator. He had begun developing the incubator before he accepted employment with the state. He began working for the department and continued his project after securing advice from the Department of Law concerning avoiding the potential conflict of interest. His job for Fish and Game was closely related to the development of incubators. The employee stated that he created the incubator on his own time. He then patented it and sold the patent to a private corporation which marketed it. Thereafter, the department was required to pay royalties for use of the process.

The employee has filed several grievances over poor performance evaluations, lost promotional opportunities, and an alleged retaliatory layoff which he believed resulted from his patenting the invention. The department testified that there had been considerable morale problems because other employees believed that they had contributed to the development of the process. They thought it unfair that one individual could secure a patent and potentially profit from an invention in which others had participated and in which the state should have an interest.

The Blue Ribbon Commission is concerned that there is no statute protecting the state's interest in the inventions, discoveries and creations made by its employees or made through the use of its facilities. Legislation for the Alaska Energy Center and the Alaska

Resources Corporation gives each agency the authority to hold patents. Nothing in either chapter spells out how the state acquires that interest.

While the proposed legislation does not specifically address the situation which occurred in the Department of Fish and Game, the commission believes that this system would alleviate similar problems in the future. Information about the number of conflict of interest hearings before the Personnel Board indicates that there will probably be no more than two or three applications of the bill per year.

Bill Analysis

- | | |
|-------------------|--|
| Page 1
Line 10 | The first section of the proposed legislation gives the state all right, title and interest in any intellectual work product developed during working hours or with the use of state facilities or by employees whose duties include responsibility for research. |
| Page 4
Line 12 | "Intellectual work product" is broadly defined later in the bill to include anything which is subject to patent, trademark or copyright laws. |
| Page 2
Line 8 | A state employee or person under contract with the state is obliged to disclose the development of an intellectual work product to the Alaska Council on Science and Technology and to assign any interest in it to the state. If requested, the person is required to assist the Council in applying for a trademark, patent or copyright. The commission believes that the Council is the most appropriate existing state agency to administer the program. |
| Page 2
Line 21 | The Council is given broad discretion to decide whether to pursue patenting, trademarking, or copyrighting the invention after consultation with affected state agencies. The Council may waive any state interest in the discovery or may waive all interest but retain a royalty-free license in the intellectual work product so that the state would not have to pay for its use in the future. If the state waives its interest, then the inventor would be able to pursue protection of his own interest in the discovery. |
| Page 3
Line 3 | The proposed legislation gives the Council authority to grant monetary recognition to employees who develop an intellectual work product. The recognition could be in |

the form of a cash award, a share in any royalties generated by the invention, or in any other manner the Council found appropriate. Payment would, of course, be subject to legislative appropriation. The commission believes that the Council should have wide discretion in implementing the monetary award system in order to best encourage employees in their work and serve the state's interests.

Page 3
Line 13

Any disagreements between an employee and the state pertaining to ownership of an intellectual work product would be subject to voluntary arbitration if the parties agreed to be bound by the result. If not, then the disagreement could be settled in court. In addition, the state and the employee or contractor may enter into an employment contract which requires compulsory arbitration.

Page 3
Line 29

Legislators and employees of the University of Alaska are exempted from the chapter. The University has its own policy on intellectual property developed at its expense which is codified in section 2 of the proposed legislation.

Page 4
Line 5

The Council is granted rule-making authority for the chapter in accordance with the Administrative Procedure Act.

Page 4
Line 24

Section 2 of the legislation adds language to codify the University of Alaska's right to intellectual work products developed by its employees.

Page 5
Line 7

Section 3 requires state employees to waive their interest in intellectual work products developed at the expense of the state as set out in section 1 of the bill. The waiver is not subject to negotiation under the Public Employment Relations Act.

Page 5
Line 29

Section 4 amends the Alaska Council on Science and Technology statutes to add the powers and responsibilities granted by the proposed legislation.

Page 6
Line 7

Section 5 repeals the patenting powers currently granted to the Alaska Energy Center and the Alaska Resources Corporation. The commission believes that there should be a single system which applies to all legislative, judicial and executive branch employees of the state.