1973

Date of Notice	Expiration	Days notice to public
TO		
1-3	1-22	19
1-5	1-24	19
1-5	1-22	17
1-8	1-23	15
1-15	1-29	14
1-15	1-29	14
2-14	3-1	15
3-1	3-23	22
3-5	3-31	16
3-6	3-26	20
3-13	3-27	14
3-13	3-28	15
3-14	3-29	15
3-15	3-30	15
3-24	4-9	16
4-12	5-1	19
4-18	4-30	12
[illegible]	[illegible]	[illegible]
4-27	5-14	17
4-27	5-14	17
5-3	5-21	18
5-3	5-18	15
5-8	5-25	17
5-17	5-31	14
5-29	6-12	14
6-6	6-20	14
6-8	6-20	12
7-6	7-26	20
7-13	7-27	14
7-20	8-9	20
7-20	8-7	18
7-26	8-10	15
8-10	8-24	25
8-13	[illegible]	[illegible]

16.39 acres

Filed 5-41

1973

8-15	9-4	20
8-28	9-18	21
8-28	9-18	21
8-28	9-18	21
9-5	9-19	14
9-14	10-1	17
9-25	10-10	15
9-25	10-10	15
9-27	10-12	15
9-27	10-12	15
9-28	10-15	17
10-8	10-23	15
[illegible]	[illegible]	[illegible]
10-5	10-23	18
10-8	10-23	15
10-9	10-31	22
10-9	10-31	22
10-12	10-31	19
10-16	11-2	17
10-24	11-12	19
10-31	11-16	16
11-5	11-22	17
11-7	11-23	16
11-16	12-4	18
11-23	12-13	20
11-27	12-11	14
11-27	12-14	17
11-30	12-20	20
12-6	12-26	20
12-6	12-26	20
12-7	12-28	21
12-7	12-28	21
12-7	12-28	21

599 33

18.15

1973

12-11	12-31	20
12-11	1-4 (74)	24
12-12	1-2	21
12-21	1-10 (74)	20

85

21.25 avg

-.70

1973 average notice to the public
17.5 days

1974 avg so far
15.5 days notice

Total 1973-4 avg (17.25 days notice)

1974

1-8-74	1-28	20
1-9	1-28	19
1-11	1-24	13
1-15	1-30	15
1-21	2-6	16
1-28	2-12	15
1-31	2-19	19
2-4	2-18	14
2-11	2-22	11
2-20	3-5	13

155

15.5 days

1974 average

1380 total = total avg. 17.25

80

STATE OF ALASKA

BEFORE THE ALASKA PUBLIC UTILITIES COMMISSION

In the Matter of the Adoption of Regulations in Chapter 48, PRACTICE AND PROCEDURE	U-72-75 ORDER NO. 2

ORDER ADOPTING REGULATIONS
(ARTICLE 2)

On April 20, 1973, the Commission issued public notice of its intention to adopt regulations in Title 3 (Commerce) of the Alaska Administrative Code, to implement AS 42.05, consisting of Part 5, Chapter 48 (Practice and Procedure), Article 2, titled "Utility Tariffs." The notice was published in the Anchorage Daily News, the Fairbanks Daily News-Miner, the Ketchikan Daily News, the Daily Sitka Sentinal, and the Southeast Alaska Empire. In addition, the notice was mailed to all known attorneys representing certificated utilities, all public accountants or certified public accountants known to be working for certificated utilities, all Senators and Representatives in the Alaska State Legislature, the Alaska Legal Services Corporation, the Alaska Bar Association and all known interested parties.

The notice provided for the filing of written arguments or statements by any interested party on or before May 21, 1973, and for the presentation of oral or written arguments or other statements at a hearing to be held in the Hearing Room of the Commission on the 11th Floor of the MacKay Building, 338 Denali Street, Anchorage, Alaska at 9:30 A.M. on May 30, 1973.

Written comments on the proposed Utility Tariff Regulations of Practice and Procedure were submitted by:

Francis M. Flavin and James Grandjean representing the Village of South Naknek

John R. Spencer representing the City of Anchorage

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Larry Colp representing Fairbanks Municipal Utilities System

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Lloyd M. Hodson representing the Alaska Village Electric Cooperative, Inc.

William J. Moran representing the Chugach Electric Association

It should be noted that the initial draft of the Commission's tariff rules was noticed on October 3, 1972, and considered at a hearing on November 15, 1972. As a result of numerous comments on that initial draft, the Commission extensively revised the proposed tariff rules and it was the revised draft which was noticed on April 20, 1973, and which, with certain amendments discussed below, will be adopted by this order.

Numerous suggestions were received on the proposed rules and many changes were incorporated in the rules as a result of those suggestions. The discussion herein, however, will be limited only to the changes which appear to the Commission to have the greatest significance.

48.210: The Commission adopted the suggestions to provide for a waiver on a showing of good cause and to allow the application for waiver to be made by an advice letter.

48.220: The grace period for filing copies of special contracts not previously filed with the Commission and tariff sheets covering every rate, charge, rule, regulation or condition of service being applied by a utility but not filed with the Commission will be changed from 30 days to 120 days after the effective date of the tariff rules. In addition, the sentence will be added delineating the various contracts not encompassed within the term "special contract" as used in this chapter.

48.230: This section will be amended to exclude nonutility billing forms and contracts. A utility will be allowed to incorporate the required forms in its tariff in lieu of submitting them separately by an advice letter.

48.250: The Commission will add a provision requiring each utility to submit for Commission approval a list of the locations at which the utility proposes to maintain a copy of its tariff on file for public inspection. It is hoped that this amendment will quiet the fears of those parties who voiced concern that their utilities would be burdened with substantial additional costs to make copies of their tariffs available at places not normally manned by trained tariff personnel.

48.260: Although several strenuous objections were made to the posting of a sign informing the public of the tariff inspection privilege, the Commission believes it is in the public interest to retain this requirement.

48.280: The Commission does not subscribe to the interpretation placed on the Statute by some parties to the effect that a separate 30-day's notice is required to be made to the public of any tariff change, nor does it agree that the public notices of tariff changes must be issued in a language other than English. As a matter of policy, however, the Commission will endeavor to make greater use of broadcast media whenever it appears that this procedure will carry the notice to a substantial number of a utility's customers who would not otherwise be made aware of the proposed tariff revision. Further, the Commission will request that the notices be broadcast in the dialect or language which is prevalent in the region.

48.290: The Commission does not agree with the contention that a 30-day period for response must be allowed commencing after the last date of publication. In our view, the statute is clear that the 30-day notice period to the Commission and to the public commences running on the day the tariff revision is properly filed with the Commission.

48.340: The Commission will substitute the decimal system for numbering of tariff insert pages in place of the present alphabetical system.

48.370: Certain provisions previously in sections 48.400 and 48.410 will be transferred to this section.

48.380: Toll settlement formulas and procedures will be specifically excluded from the schedules required to be filed by telecommunications utilities.

48.390: Several parties objected to the inclusion of a firm requirement that no special contract may become effective without the prior approval of the Commission and shall, at all times, be subject to any revisions which the Commission may order. They pointed out that in some instances this requirement might unreasonably complicate the contracting process to the great disadvantage of all parties. Accordingly, the Commission will make specific provisions for a waiver of this requirement when circumstances warrant.

48.420: Perhaps the most controversial rule proposed by the Commission concerns deposit practices. The Commission remains firm in its conviction that the public interest will be enhanced if utility deposit practices are regularized throughout the state to the maximum feasible extent.

Since the use of utility services and credit standings vary widely between customers, and recognizing that there often may exist extenuating circumstances which would make absolutely fixed rules extremely difficult to apply uniformly to all utility customers, the Commission provided an area of discretion in which a utility may exercise its judgment as to the proper deposit requirement after consultation with the customer. The maximum deposit for all types of utilities will be set at two-months billings.

The Commission does not agree that any type of utility, except a telephone utility (because of the toll billing delay), should hold a deposit longer than 25 days after discontinuance of service. On the other hand, the Commission finds merit in the comments of several parties to the effect that a customer who does not habitually pay his bills on time should not expect to receive service without having made a deposit.

As to the proposed provisions requiring payment of interest on deposits and waiving deposit requirement for persons who have reached or exceed 62 years of age, in consideration of the numerous strong protests to them the Commission has decided to withdraw the provisions pending further study.

THE COMMISSION FURTHER FINDS AND CONCLUDES:

1. The procedural requirements, as provided in AS 44.62.180 et seq., for public notice and affording an opportunity to each interested party to present statements, arguments and contentions relating to the proposed adoption of regulations titled "Utility Tariffs" in Title

3, Part 5, Chapter 48 (Practice and Procedure), Article 2 of the Alaska Administrative Code, have been met in this proceeding.

2. The comments which were submitted, both oral and written, have been considered by the Commission and in furtherance of the public interest the regulations titled "Utility Tariffs" in Chapter 48, Article 2, modified pursuant to the discussion above, should be adopted and duly filed as provided by statute.

ORDER

THE COMMISSION ORDERS, That, the proposed regulations, Title 3, Part 5, Chapter 48, Article 2 of the Alaska Administrative Code, attached hereto as Appendix A, are hereby adopted under the authority vested by AS 42.05. 151, and shall be duly filed with the Lieutenant Governor in accordance with the provisions of the Administrative Procedure Act (AS 44.62).

By Direction of the Commission:

DATED AND EFFECTIVE at Anchorage, Alaska, this 5th day of October, 1973.

ALASKA PUBLIC UTILITIES COMMISSION

Maurice H. Oaksmith

Maurice H. Oaksmith
Deputy Director

STATE OF ALASKA

BEFORE THE ALASKA PUBLIC UTILITIES COMMISSION

In the Matter of the Adoption of Regulations in Chapter 48, PRACTICE AND PROCEDURE	U-72-75

CERTIFICATION OF MAILING

Donna R. Gould certifies as follows:

That I am Clerk Typist III in the offices of the Alaska Public Utilities Commission, 1100 MacKay Bldg., 338 Denali Street, Anchorage, Alaska 99501.

That on the 5th day of October, 1973, I mailed true and accurate copies with postage thereon to the parties indicated on the attached service list of

ORDER NO. 2

ORDER ADOPTING REGULATIONS
(ARTICLE 2)

in the above-entitled cause.

DATED at Anchorage, Alaska, this 5th day of October, 1973.

Donna R. Gould

SERVICE LIST

U-72--75

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Francis J. Flavin, Esquire
James Grandjean, Esquire
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COURTESY LIST

The Honorable Emmitt L. Wilson
Commissioner
Department of Commerce
Pouch D
Juneau, Alaska 99801

The Honorable John E. Havelock
Attorney General of Alaska
Pouch K
Juneau, Alaska 99801

Robert J. Mahoney
Cole, Hartig, Munley, Rhodes & Norman
717 "K" Street
Anchorage, Alaska 99501

Courtesy List (Cont'd)

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Northern Commercial Company
419 Colman Building
Seattle, Washington 98104

Alaska Power and Telephone and
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Civil Section
360 "K" Street
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Archie Gottschalt
Rural Alaska Community Action Program
Drawer 412 ECB
Anchorage, Alaska 99501

Telephone (907) 452-1716

Doyon, Limited

527 Third Avenue
~~530 Fifth Avenue~~
Fairbanks, Alaska 99701

May 29, 1973

Mr. Jack Stearn
Executive Director
Alaska Public Utilities Commission
1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Dear Mr. Stearn,

It has been brought to our attention that you are soliciting comments on Title 3 to implement AS 42.05 as it relates to notice that utility companies must provide to their customers whenever these companies set or change their rates.

RECEIVED APUC
1 MAY 73 11:

Doyon, Limited is a native Regional Corporation with a very deep interest in utilities within the 42 villages in our region. We have been aware for some time that the notice for public hearings on rate changes and service has been totally inadequate.

I would like to thank the Commission for sincerely looking into this problem and doing something about it.

We believe that future public notice should be given by radio as well as newspapers. Newspaper notice is generally in the legal section and receives very little scrutiny. Radio notices would be just an additional way to make sure that as many people as possible know about the hearings. Additionally we feel that native languages should be used where the language is used more than English.

One final method of notification we believe should be used is to require the utility to give written notice to individual customers along with utility bills.

Please enter this letter into the official transcript of hearing.

Thank you

Sam Kito, Jr.
Executive Vice President

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
315 FIFTH STREET, SUITE 8
JUNEAU, ALASKA 99801
TELEPHONE 586-XXX 6425

MEMORANDUM

To: Rep. Terry Gardiner

From: Don Clocksin DLC

Subject: Floor Debate - HB 192, Public Utility Notices

Date: March 20, 1975

Since your bill, HB 192, is in Rules, you may want to refer to this summary when it appears on the House calendar,

I. Background.

This bill originated from the Bush Justice Conference in June, 1974, in Minto, Alaska. There, Alaskans living in rural areas gathered to discuss the delivery of state services to the bush and to recommend changes. One problem identified was the lack of notice and input rural residents had on decisions made by administrative agencies that affected their lives. The Administrative Law Committee of the Alaska Bar Association, made up of lawyers representing utilities and consumers developed the legislation.

II. Present Law.

Under present procedures of the Alaska Public Utility Commission, if a utility requests a rate change or other revision of its tariff from the APUC, the Commission files it, notifies the public, and, if no objections are received within 30 days, the change goes into effect automatically. The present law requires 30 days' notice to the public from the date the proposed revision is filed. Since delays occur between filing with the APUC and actual publication, substantially less than 30 days' actual notice is available to comment. Testimony indicated in 1973 that only 17.3 days actual notice to the public was given, on the average.

III. What the Bill Will Do.

The bill would require at least 30 days' actual notice to the public, and gives the APUC 15 days from the date the proposed change is filed with them to issue the public notice.

The net result is to increase by 15 days the period of time before

a revision can take effect and to assure more time for public comment. The bill will not alter the right of the APUC to adopt changes quicker than that in emergencies.

IV. Support.

The bill is supported by the Bush Justice Monitoring Committee, Alaska Legal Services Corporation, the Alaska Bar Association, and is approved by Commissioner Zerbetz of the APUC. There is no known opposition.

cc: Rep. Bob Bradley

Introduced: 2/21/75
Referred: Commerce and Judiciary

IN THE HOUSE BY GARDINER

HOUSE BILL NO. 192

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to changes in public utility tariffs."

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

* Section 1. AS 42.05.411(a) is amended to read:

(a) No public utility may establish or place in effect any new or revised rates, charges, rules, regulations, conditions of service or practices except after 45 [30] days notice to the commission and 30 days notice to the public. Notice shall be given to the commission by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission shall prescribe means by regulation whereby notice is given to the public before or no later than 15 days after the filing which shall be reasonably adequate to notify customers affected by the filing [MAY PRESCRIBE ADDITIONAL MEANS OF GIVING NOTICE]. The commission, for good cause shown, may allow changes to take effect on less than 45 [30] days notice to the commission or 30 days notice to the public under conditions the commission prescribes.

1974 - average 15.5 days - notice

~~Alaska Power Admin.~~

\# -1- HB 192

STATE OF ALASKA

BEFORE THE ALASKA PUBLIC UTILITIES COMMISSION

In the Matter of the Adoption of Regulations in Chapter 48, PRACTICE AND PROCEDURE	U-72-75 ORDER NO. 2

ORDER ADOPTING REGULATIONS
(ARTICLE 2)

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1. The procedural requirements, as provided in AS 44.62.180 et seq., for public notice and affording an opportunity to each interested party to present statements, arguments and contentions relating to the proposed adoption of regulations titled "Utility Tariffs" in Title

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ORDER

THE COMMISSION ORDERS, That, the proposed regulations, Title 3, Part 5, Chapter 48, Article 2 of the Alaska Administrative Code, attached hereto as Appendix A, are hereby adopted under the authority vested by AS 42.05. 151, and shall be duly filed with the Lieutenant Governor in accordance with the provisions of the Administrative Procedure Act (AS 44.62).

By Direction of the Commission:

DATED AND EFFECTIVE at Anchorage, Alaska, this 5th day of October, 1973.

ALASKA PUBLIC UTILITIES COMMISSION

Maurice H Oaksmith

Maurice H. Oaksmith
Deputy Director

STATE OF ALASKA

BEFORE THE ALASKA PUBLIC UTILITIES COMMISSION

In the Matter of the Adoption of Regulations in Chapter 48, PRACTICE AND PROCEDURE	U-72-75

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ORDER NO. 2

ORDER ADOPTING REGULATIONS
(ARTICLE 2)

in the above-entitled cause.

DATED at Anchorage, Alaska, this 5th day of October, 1973.

Donna R. Gould

SERVICE LIST

U-72-75

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Juneau, Alaska 99801

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COURTESY LIST

The Honorable Emmitt L. Wilson
Commissioner
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Pouch D
Juneau, Alaska 99801

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Anchorage Attorney General's Office
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Archie Gottschalt
Rural Alaska Community Action Program
Drawer 412 ECB
Anchorage, Alaska 99501

HB

197

Members files on HB 197

Alaska State Legislature

House of Representatives

March 19, 1975

BRENDA T. ITTA
BARROW, ALASKA 99723

POUCH V
JUNEAU, ALASKA 99811

DISTRICT 21

AMBLER
ANAKTUVUK PASS
ATKASOOK
BARROW
BARTER ISLAND
BORNITE-KOBUK
BROWERVILLE
KIANA
KIVALINA
KOTZEBUE
NOATAK
NOORVIK
NUIQSUT
POINT HOPE
POINT LAY
SHUNGNAK
WAINWRIGHT

Mr. A. G. Hiebert
P.O. Box 2200
Anchorage, Alaska 99510

Dear Mr. Hiebert:

Thank you for your letter supporting the passage of HB 197. My stand on this is in opposition to HB 197 because we are entering into an era where careful utilization of fish and game possession must be preeminent. There are hundreds of people coming into our state who can become residents in just 30 days; the native people of Alaska in rural areas have carefully managed and utilized the existing fish and game and we are presently encountering a shortage of it in certian areas; and the majority of residents in Alaska take great pride in making sure that fish and game are not wasted. Additionally, all the residents are encountering inflationary costs and I believe the trend to hunt is increasing. The residents of Alaska pay normal costs for groceries, meats, etc. at the grocery stores and the military personnel have access to lower costs for groceries, meats, milk products, etc. from their military commissaries. I believe that it is unfair to allow the military personnel to be in the same line, as far as fish and game permits are concerned, with the Alaskan residents.

Sincerely,

Brenda T. Itta

Brenda T. Itta

BTI/mm

cc: Rep. Nels Anderson, Chairman, House Resources Committee
Senator Kay Poland, Chairwoman, Senate Resources Committee
✓ Rep. Terry Gardiner, Chairman, Judiciary Committee

Mandatory check points

5 AAC 81.070. BIG GAME. Provides that all nonresident hunters must obtain a permit at specified locations prior to hunting any big game animal in Game Management Unit 9 and that such hunters must report back to the specified locations subsequent to hunting.

The proposed regulation reads as follows:

5 AAC 81.070. (b)(4) no nonresident may hunt for or take any big game animal in Game Management Unit 9 until he has reported to a Game Biologist or Protection Officer at a location designated in this section, permitted inspection of all licenses and tags, received a nontransferable permit and provided the following information:

(1) the specific location or locations where each game species will be hunted

(2) a copy of the Guide/Client contract if a guide is employed

(3) the dates during which the hunt will be conducted

(4) other information requested by the issuing officer

(A) no nonresident may hunt in Game Management Unit 9 unless he has a permit in his possession. He shall allow inspection of the permit on request of any Department of Fish and Game personnel

(B) a nonresident who hunts in Game Management Unit 9 shall report prior to leaving the Game Management Unit upon completion of the hunt or at least within five days after the end of the season at the same location where he received a permit prior to hunting, and he may not ship or cause to be shipped any portion of a big game animal until he has reported

(C) at the time of reporting as required in (B) of this section, the nonresident shall present most of the edible meat or receipt for the meat of all big game wild food animals taken and all hides, horns, and antlers, for inspection and shall provide the following information:

i. name of assistant guide if one was engaged

ii. species, sex, location of kill, and date for all animals taken

iii. other information requested by the officer

(continued on page 7)

(#9 continued)

(D) the reporting required by this section shall be during the regular business hours at one of the following locations:

i. King Salmon
ii. Iliamna
iii. Port Heiden
iv. Cold Bay
v. Port Moller

FAVOR: Anchorage Area Advisory Committee (ref. public page 6)
Harley Busbey (ref. public page 16)
Denali Advisory Committee (ref. public page 24)
Homer Advisory Committee (ref. public page 52a)
Naknek Advisory Committee (ref. public page 59a)
Ottokar J. Skal (ref. public page 71)

OPPOSE: Headquarters, Alaskan Command (ref. public page 1)
David W. Henley (ref. public page 50)
George R. Pollard (ref. public page 61)

ACTION TAKEN:

#10 5 AAC 81.070. BIG GAME. Adds all big game in Unit 15(B) to the list of big game animals which may not be taken the same day the hunter is airborne.

The proposed regulation reads as follows:

5 AAC 81.070. (6) no person may take or assist in taking black or glacier bear in Unit 5, sheep or brown or grizzly bear in any unit, or any big game in Unit 15(B) until after midnight of any day in which he was airborne.

FAVOR: Anchorage Area Advisory Committee (ref. public page 7)
Denali Advisory Committee (ref. public page 24)
George R. Pollard (ref. public page 61)

OPPOSE:

ACTION TAKEN:

Cross References

American National Red Cross, see section 1 et seq. of Title 36, Patriotic Societies and Observances.
Cooperation and assistance to armed forces, see section 2682 of this title.

§ 2671. Military reservations and facilities: hunting, fishing, and trapping

(a) The Secretary of Defense shall, with respect to each military installation or facility under the jurisdiction of any military department in a State or Territory—

(1) require that all hunting, fishing, and trapping at that installation or facility be in accordance with the fish and game laws of the State or Territory in which it is located;

(2) require that an appropriate license for hunting, fishing, or trapping on that installation or facility be obtained, except that with respect to members of the Armed Forces, such a license may be required only if the State or Territory authorizes the issuance of a license to a member on active duty for a period of more than thirty days at an installation or facility within that State or Territory, without regard to residence requirements, and upon terms otherwise not less favorable than the terms upon which such a license is issued to residents of that State or Territory; and

(3) develop, subject to safety requirements and military security, and in cooperation with the Governor (or his designee) of the State or Territory in which the installation or facility is located, procedures under which designated fish and game or conservation officials of that State or Territory may, at such time and under such conditions as may be agreed upon, have full access to that installation or facility to effect measures for the management, conservation, and harvesting of fish and game resources.

(b) The Secretary of Defense shall prescribe regulations to carry out this section.

(c) Whoever is guilty of an act or omission which violates a requirement prescribed under subsection (a)(1) or (2), which act or omission would be punishable if committed or omitted within the jurisdiction of the State or Territory in which the installation or facility is located by the laws thereof in effect at the time of that act or omission, is guilty of a like offense and is subject to a like punishment.

(d) This section does not modify any rights granted by treaty or otherwise to any Indian tribe or to the members thereof.

Added Pub.L. 85–337, § 4(1), Feb. 28, 1958, 72 Stat. 29.

File on military residency bill

[illegible] Roger Drive
Anchorage, Alaska 99507
March 21, 1975

Governor, State of Alaska
Juneau, Alaska 99811

Dear Governor,

It has come to my attention that the State lawmakers are considering a change in residency requirements for military personnel with respect to hunting and fishing. I am emphatically against the proposal to reduce the requirement to year time, as I understand the change. It would be [illegible] to perpetuate this proposal upon existing residents and non-military new-comers to the State who pay various state and local taxes which the military people are exempt from. Justice would be better served by refusing residency for military people who choose not to accept Alaska as their State of residence during their stay.

Sincerely,
Stephen Keith

copies: Resources & Judiciary Committee

Original sponsor: Fink and Parr

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 197

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to sport fishing license requirements."

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

* Section 1. AS 16.05.340(7) is amended to read:

(7) Nonresident sport fishing license.....$20

However, the fee is $5 for a member of the military service on active duty who is stationed in the state and the dependent of an active member of the military service who is stationed in the state.

HB

202

FOR MEMBERS OF THE ALASKA STATE SENATE

Resolution Adopted by the Board of Regents, University of Alaska at Its Meeting in Anchorage, May 9, 1975

BE IT RESOLVED that the Board of Regents of the University of Alaska express its strong opposition to the passage of HB202, for the reasons that shortening the term of Regents from 8 to 5 years will seriously weaken the Board by limiting needed experience and continuity of its membership, and by increasing the undeniable possibility of dominant influence upon the Board by a single chief executive of the State; and

BE IT FURTHER RESOLVED that a copy of this resolution be sent to each member of the Alaska State Senate.

XXX

Sue Greene HB202 Bd of Regents

Gov. Support of expansion of Board
" change in term of office

Have letter of intent that incumbents 8 year term be treated as a 5 year Term

Robert McFarland - Pres of Regents
14 years
Political implications
Hammond 4 - 1 - 2
I don't good to allow Governor to pick all Regents
Large Number of Regents won't solve problems
Think it took 5 years to get Randolph on University
1. Maybe this a comment on the University

Would you back

Presently 4 year limit on Pres term

5 A
3 ANC
2 FAI
1 SW
1 KTN
1 North
1 West
Brundine

What about Egan at Statehood

Bryan Brundine 6 years

HB

203

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

Office of the Attorney General
Pouch K - State Capitol
Juneau 99811

March 10, 1976

The Honorable Terry Gardiner
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Referendum on Ch. 205, SLA 1975, relating to salaries, retirement, and per diem

Dear Representative Gardiner:

You have asked our opinion on the legal consequences which will attend possible passage of the referendum on Chapter 205, SLA 1975. Specifically you have asked that we consider the effect of a repeal of the provisions of Ch. 205 that affect (1) judicial salaries, and (2) retirement plans for both the judiciary and other state officials.

It is our opinion that the referendum, if adopted, will not repeal salary increases given by Ch. 205 to presently appointed judges and justices. The referendum, if passed, will repeal the pay increase for judges appointed after the repeal of the act. Similarly, repeal will revive the old retirement provisions for all judges, that is, incumbents and those appointed either before or after the repeal.

The situation in respect to public officials and employees (other than judges) is complicated. If the referendum passes, it will repeal retirement provisions for employees who do not have vested rights in the retirement system. Those employees who have received vested rights, however, may not have those rights rescinded by the referendum's adoption. The problem is that the makeup of those two classes--those in whom rights are vested and those in whom rights have not vested--is uncertain and could only be determined by extensive litigation.

Our analysis of these issues follows. As you requested, we shall also discuss the alternatives which we believe are available to the legislature at this time concerning possible legislation which would alleviate the legal problems discussed in this opinion.

DISCUSSION

Introduction.

The 1975 Alaska Legislature enacted a law relating to the compensation and retirement of judicial officers, legislators, and public officers and employees and to legislative per diem. Ch. 205, SLA 1975. A referendum petition was duly circulated and filed within the ninety-day period prescribed by law. If a majority of votes cast on the referendum proposition favor rejection of chapter 205, that act will be void.

Id., art. XI, §6; AS 15.45.440. This has been characterized by the Alaska Supreme Court as "a procedure whereby the electorate directly votes on whether to repeal existing law." Area Dispatch, Inc. v. City of Anchorage, _____ P.2d _____ (Alaska 1976), Sup. Ct. Op. No. 1231, Jan. 16, 1976.

The filing of a referendum petition does not, in Alaska, suspend the effect or operation of the law referred. Walters v. Cease, 388 P.2d 263 (Alaska 1964); 4 Proceedings of the Alaska Constitutional Convention 2964-2965. As a result, most of the provisions relating to compensation and retirement in chapter 205, SLA 1975, have been in effect since July 1, 1975, and some of those respecting retirement, since January 1 of this year. Because the law has been in effect, a number of problems arise from provisions of the constitution that provide:

> Justices, judges, and members of the judicial council shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State. Alaska Constitution, art. IV, §13 (emphasis added).

* * * *

> Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.
>
> Id., art. XII, §7. (emphasis added).

The question raised by these constitutional provisions is whether and how the referendum, if it results in the repeal of chapter 205, SLA 1975, may be in conflict with the constitutional bar against diminution of judges' compensation and of employee retirement benefits.

The Legal Nature of the Referendum.

A referendum may be viewed in one of two ways. On the one hand, it may be equated with the gubernatorial veto. On the other, it may be equated with a legislative repeal. In those jurisdictions where the filing of a referendum petition suspends the operation of the referred law, the comparison to a veto is most apt. But in Alaska, where the referred law is not suspended pending the vote on the referendum, the comparison to the veto is inapposite, and the referendum is properly to be considered the equivalent of a repeal. The referendum in Alaska has in fact been characterized as a "repeal" by our Supreme Court. Area Dispatch, Inc. v. City of Anchorage, supra.

There are two principal reasons for viewing the referendum in Alaska as a repeal rather than as a veto. The first is that in Alaska a referred law goes into effect and remains in effect until thirty days after the certification by the Lieutenant Governor of the election results rejecting it. Alaska Constitution, art. XI, §6; AS 15.45.440. A vetoed law never goes into effect. Thus, the effect of rejecting a law by referendum is, quite literally, to repeal the law. The second is that, where the power to act by way of the initiative and referendum is reserved to the people, the legislature and the electorate are viewed as coordinate legislative bodies, and aside from constitutional restraints either may amend or repeal an enactment by the other. Klosterman v. Marsh, 143 N.W.2d 744, 748 (Neb. 1966); see, Annotation, 33 A.L.R.2d 1118, 1121. It follows that, in rejecting an act passed by the legislature, the electorate, as a coordinate legislative body, is repealing the act rather than vetoing it.

The distinction is important. The Governor could clearly veto an act setting judicial compensation and employee retirement pay without breaching the constitutional prohibitions quoted above. In case of a veto, the act would never have gone into effect and no diminution of judicial compensation or of accrued employee retirement benefits would occur. On the other hand if a law goes into effect and sets judicial compensation and employee retirement pay at a particular level, the legislature may not subsequently repeal the law and thereby diminish that

compensation and accrued retirement benefits, at least for incumbents, for to do so would violate the constitutional prohibitions. The electorate in using the referendum has no greater power under the Constitution than does the legislature. Both are subject to the same constitutional restraints, and indeed, those imposed on the exercise of direct legislation are somewhat greater. Star v. Hagglund, 374 P.2d 316 (Alaska 1962); compare Alaska Constitution, art., XI, §7, with art., IV, §15 (legislative amendment of rules of court) and art., II, §19 (local and special acts sole restriction on legislature's power).

In reporting to the Constitutional Convention on the prohibition against diminution of judicial salaries, the Committee on the Judicial Branch said:

> While compensation for justices and judges should be prescribed by law, it should not be susceptible of arbitrary diminution during office. It . . . should be subjected to decrease only when a general reduction applying to all State officers becomes imperative. 6 Proceedings Alaska Constitutional Convention. App. V, p. 15.

We need not inquire as to the extent of the meaning of the term "all State officers." It obviously includes the Governor and the Lieutenant Governor, and since the repeal of chapter 205, SLA 1975, will not diminish their salaries, that repeal cannot under the constitution diminish the salaries set by chapter 205 for incumbent justices and judges.

In addition to setting new judicial salaries, chapter 205 also provided a new method for setting judicial salaries by tying those salaries to the salary schedule for state employees. Under this new method, when the salary for Step E, Range 28 is increased, the salaries for justices and judges is similarly increased. Sections 1-3, chapter 205, SLA 1975. It may well be that this new method of setting judicial salaries is subject to repeal by the legislature or by referendum. Repeal would not, per se, diminish the salaries, but it would raise a separate question. That question is what would happen if the salary for Step E, Range 28 were subsequently increased, but judicial salaries were not increased by an amount equal to the increase that would have occurred if chapter 205 had not been repealed. The answer is uncertain.

In Campbell v. Michigan Retirement Bd., 143 N.W.2d 755 (Mich. 1966), certain judges had retired and were benefitted by a law which contained an escalator clause tying their retirement pay to a percentage of the salary paid to sitting judges. Subsequently, the legislature repealed the escalator clause and set the retirement at one-half the amount being paid the retired judges immediately preceding their retirement. The retired judges retirement pay was not immediately affected.

Thereafter, the legislature increased the salaries of sitting judges. The retired judges at that time received less than they would have if the escalator clause had still been in effect. Their retirement pay had not been cut, it simply had not been increased to keep pace with the salary paid sitting judges. They thereupon brought suit, arguing that they had a contract, that the repeal of the escalator clause impaired the contract, and that it was, therefore, void as to them. The court agreed.

The court ruled that the State's agreement to pay certain benefits vested the judges with rights upon retirement and that those rights could not be impaired. 143 N.W. 2d 757, 758. In effect, the court said that the judges who retired under the act which contained the escalator clause were entitled to receive benefits as provided by that clause and that the repeal of the clause was ineffective as to them.

The significance of the ruling is that the court viewed the escalator clause as creating a right and not as a mere expectancy The legislature had not expressly reduced the retirement pay. But the court did not even refer to that fact, apparently considering it irrelevant. What it looked at was the actual increase in the salary of sitting judges and the failure to increase the retirement pay for retired judges because of the repeal of the escalator clause. It found the failure to increase retirement pay as an impairment of the <u>right</u> to such an increase.

Campbell involves contractual rights to retirement pay, not judicial salaries, and it is not necessarily applicable to the instant situation. However the Campbell court's analysis could be applied to a repeal of the escalator clause for judicial salaries. It is conceded that repeal of chapter 205, SLA 1975, cannot reduce the salaries set in that act for judges in office at the time of the repeal. Repeal will be effective with respect to the salary escalator clause if it is viewed as an expectancy. But it may be viewed otherwise. Paraphasing the Campbell court:

> Judges who are in office when a statute is in effect providing that their salary shall be a certain percentage above that of Step E, Range 28, are entitled to that salary despite the repeal of the statute containing the escalator clause.

The reason for that conclusion is that, despite the absence of any express reduction in salary, there would be a reduction in fact if the salary paid the judges is less than the amount set for them by the 1975 act.

Put another way, any act--including a repeal by referendum--which results in judges receiving a lesser salary than that provided for under chapter 205 could constitute a constitutionally barred reduction in salary and would be without effect as to judges in office at this time. Incumbent judges are entitled to the salary provided for by chapter 205, and the entitlement may not be reduced indirectly any more than it may be reduced directly.

See also, Abbott v. City of Los Angeles, 326 P.2d 484 (Cal. 1958) (retirement pay, same result as Campbell).

Of course, a repeal which provides for another mechanism for setting salaries for the judiciary may not result in such a reduction, since all judges may in fact receive a salary which is equal to or greater than the one to which they would be entitled under chapter 205. If that occurred, repeal of chapter 205 would be of no moment. It is also possible that the members of the judiciary would accede to a new mechanism for setting salaries and not dispute a salary less than the one to which chapter 205 entitled them. It must be recognized, however, that a dispute may arise and that the outcome is uncertain.

Finally, chapter 205, SLA 1975 provided for the first time that justices and judges contribute to their retirement program. Because contribution would constitute a diminution in the salary paid incumbents, the requirement was applied solely to judges appointed after the law's effective date. See, Sylvestre v. State, 214 N.W. 2d 658, 666 (Minn. 1973); but see, Cook v. Chilton, 390 S.W.2d 656 (Ky. 1965). If chapter 205 is repealed by the referendum, the repeal will be effective as to this requirement, and new judicial appointees will qualify under the old system which required no contribution.

We turn next to the other provisions of chapter 205, SLA 1975, relating to retirement. These provisions affect two distinct classes of persons: elected public officials, and public employees. We discuss them separately.

Elected Public Officials.

The constitution provides that "[m]embership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired." art. XII, §7. This provision was placed in the constitution to "assure state and municipal employees who are now tied into various retirement plans that their benefits under these plans will not be diminished or impaired when the Territory becomes a state." 6 Proceedings Alaska Constitutional Convention, App. V, p. 140.

By statutory definition, "elected public officials" are not "employees." They are the Governor, Lieutenant Governor, and members of the legislature. AS 39.37.150. Each is an officer expressly provided for by the constitution, and they hold the only elective state offices provided for by the constitution.

Begich v. Jefferson, 441 P.2d 27 (Alaska 1968), held that the constitutional prohibition against holding any other office or position of profit extended to any salaried employment with the State. But Begich did not rule that the terms "employee" and "officer" are interchangeable or that the term "employee" as used to modify the term "retirement systems" in article XII, section 7, includes the Governor, Lieutenant Governor, and members of the legislature. Indeed, in analyzing the constitution's use of the terms "employment" and "employee," the Begich court appeared to accept the conclusion that elected officials were

not covered by those terms. 441 P.2d 33. And in fact, the words "employees" and "officials" are distinguished by the constitution, art. VI, §8, and this too was recognized by the Begich court. Id. n. 14.

Given that the constitution distinguishes between "employees" and "officials," that it expressly applies the protections of section 7 of article XII only to the former, and that it was expressly intended that the constitutional protection would apply to "state and municipal employees," 6 Proceedings Alaska Constitutional Convention, App. V, p. 140, it is our opinion that elected public officials are not covered by the protections of article XII, section 7.

The specific constitutional protection aside, persons enrolled in any retirement system may have contractual rights, and those rights may not be impaired under the state and federal constitutions. With respect to "elected public officials", the existence, nature, and extent of those rights are uncertain. Arguably, any "elected public official" who enrolled in the system has vested rights which may not be impaired. See, e.g., Yeazell v. Copins, 402 P.2d 541 (Ariz. 1965); Baker v. Retirement Bd. of Allegheny County, 97 A.2d 231 (Pa. 1953); Abbott v. City of Los Angeles, 326 P.2d 484 (Cal. 1975); Bakenhaus v. City of Seattle, 296 P.2d 536 (Wash. 1956); Annotation, 52, A.L.R.2d 437. This would almost certainly be so for any "elected

public official" who retired or died prior to the repeal of chapter 205. See, King County Employees Ass'n. v. State Emp. Retire. Bd, 336 P.2d 387 (Wash. 1959).

On the other hand, it may well be that the legislature, and the electorate by referendum, may effectively repeal the retirement provisions as they apply to elected public officials. The theory would be that, as a matter of public policy, and because the constitutional protection for public employee retirement systems does not apply to them, the terms of their employment rest in legislative policy rather than contractual obligation. See, Spina v. Consolidated Police, Etc. Pension Fund Com., 197 A.2d 169 (N.J. 1964). Under this view, the repeal or alteration of the law would be effective as to elected public officials if they are not (and we believe they are not) covered by article XII, section 7, of the Alaska Constitution. This would also be so if the electorate repeals chapter 205. 1/

In Spina v. Consolidated Police, etc. Pension Fund Com., 197 A.2d 169 (N.J. 1964), amendments to a retirement law were applied to persons who were employed prior to adoption of the amendments. The retirement programs prior to amendment were actuarially unsound. (at 170). The plaintiffs in Spina had lost the specific benefits complained of some 18 years before the suit was brought. And the Spina plaintiffs, through continuing contributions, indicated "in an affirmative way that they accepted or at least yielded to" the alterations. (at 172)

1/ This would not be the rule as to public employees. The people, in article XII, section 7, of the Alaska Constitution, have made a contract with them which could be revoked, if at all, only by constitutional amendment.

Spina did not rule against the plaintiffs on those grounds, however. Its ruling was as follows:

> [I]n our State the terms and conditions of public service in office or employment rest in legislative policy rather then contractual obligation, and hence may be changed except of course insofar as the State Constitution specifically provides otherwise. 197 A.2d 173 (emphasis added, citations omitted).

While rejecting the contract theory, the Spina court nonetheless recognized that in some jurisdictions, constitutional language defines the rights of employees as "contractual." (at 175) One of those jurisdictions is Alaska.

Alaska's Constitution expressly provides that "[m]embership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship." art. XII, §7. This provision does not, however, appear to apply to "officers." Accordingly, while the Spina rule may not be applied to the public employees retirement system, which by the constitution is made contractual, it could, perhaps, be applied to the elected public officials retirement system, which is not. See, Yeazell v. Copins, 402 P.2d 541 (Ariz. 1965) dissent of Udall, J. at 547, for an examination of the distinctions. See also, Cohn, "Public Employees Retirement Plans -- The Nature of Employees' Rights," 1968 U.Ill. L.F. 32, for a general review of the contract-no contract dispute.

An additional problem is raised with respect to repealing the retirement benefits of the Governor and Lieutenant Governor. Section 15, article III, of the Alaska Constitution provides as follows:

> The compensation of the governor and the lieutenant governor shall be prescribed by law and shall not be diminished during their term of office, unless by general law applying to all salaried officers of the State. (emphasis added)

While the Spina rule would avoid contractual problems, it does not afford a shelter from this constitutional bar. Arguably, retirement is a form of compensation, more particularly, deferred compensation. See, Annotation 52 A.L.R.2d 437. If the benefits bestowed on the Governor and the Lieutenant Governor by chapter 205 were characterized by the state Supreme Court as compensation, repeal of chapter 205 would be ineffective as to the incumbents.

Arguably, since a repeal could have no real effect on their retirement benefits until after they have completed their terms of office, a repeal is not within the scope of the prohibition. But that might not be so if either left office prior to the end of his term. It would appear, however, that there would be no conflict if, in fact, compensation is not diminished during their term. See, Abbott v. City of Los Angeles, 326 P.2d 484 (Cal. 1958).

Spina suggests that it would be erroneous to characterize retirement benefits as "deferred compensation" and thereby compel an unintended but then inevitable result. See also, the dissent of Justice Udall in Yeazell v. Copins, 402 P.2d 541, 547 (1965). This better view, according to these sources, would be to look at the facts and rule in accordance with them. If, in fact, the compensation is not diminished, or if, in fact, the purpose of the prohibition is not frustrated, then the dictates of the Constitution are not offended. See, Cook v. Chilton, 390 S.W.2d 656 (Ky. 1965). Since the purpose of the prohibition (as is the purpose of the prohibition discussed above relating to justices and judges) is to prevent the legislature from reducing incumbents' compensation, 6 Proceedings of the Alaska Constitutional Convention App. V at 123, and since that purpose is "to secure the independence" of the incumbents, Evans v. Gore, 253 U.S. 245, 264 (1920) (Holmes, J. dissenting), repeal of chapter 205 could be viewed by the state Supreme Court as not within the terms of the prohibition.

There is no certainty as to the effect of a repeal of chapter 205 on the retirement benefits of "elected public officials," i.e., the Governor, Lieutenant Governor, and legislators. However, unlike the thousands who would be affected by repeal of chapter 205 as it relates to state and municipal employees, and the multitude of law suits which could arise from that situation, we are dealing here with a handful of people. If arbitrary distinctions arise, they will be short lived. If litigation

ensues, it will involve only a few people and a few cases. Accordingly, repeal of chapter 205 with respect to "elected public officials," while creating some uncertainties, does not pose a major problem.

Public Employees.

Chapter 205, SLA 1975, bestowed certain retirement benefits not only on elected public officials but also on public employees. Public employees have contractual rights, and their accrued benefits may not be impaired under our constitution. Art XII, §7. What is uncertain is whether the Alaska Supreme Court will rule that the benefits of Chapter 205 are vested in all employees, or in those with five years service, or in those now eligible to retire, or in those who have retired or died since the law went into effect. The prevailing view in those jurisdictions which treat employee retirement as contractual in nature is that the rights vest in everyone who is employed or becomes employed while the law is in effect. See, e.g., Mt. Clemens Fire Fighters Union, Local 838, I.A.F.F. v. City of Mt. Clemens, 228 N.W. 2d 500 (Mich. App. 1975); Birnbaum v. New York State Teachers Retirement System, 152 N.E. 2d 241 (N.Y. 1958); Yeazell v. Copins, 402 P.2d 541 (Ariz. 1965); Abbott v. City of Los Angeles, 326 P.2d 484 (Cal. 1958).

In some "contractual" jurisdictions, law governing retirement may be amended and the amendments will apply to persons employed prior to the amendment if the amendment is materially related to the principles of a retirement system and its successful operation, i.e., actuarial in nature, and the detriments imposed by the amendment are accompanied by comparable new advantages. See Abbott v. City of Los Angeles, 326 P.2d 484, 489 (Cal. 1958). Some jurisdictions do not require off-setting advantages, if the amendments are actuarially proper. See, King County Employees Ass'n. v. State Emp. Retire. Bd., 336 P.2d 387 (Wash. 1959). But these are not jurisdictions with express constitutional protection for public employee retirement systems. The leading case from such a jurisdiction stands for the proposition that detrimental changes, even actuarially necessary ones, may be imposed only on employees who enter service after the effective date of the change. Birnbaum v. New York State Teachers Retirement System, 152 N.E. 2d 241 (N.Y. 1958).

The Alaska Supreme Court might well conclude that the repeal of Chapter 205 would not change the rights of those public employees who where in service while chapter 205 was in effect. The reason for this is that the repeal is not actuarially required and that it does not provide any off-setting benefits. Thus, even under the more flexible California and Washington rules, the repeal of the law would not be applicable to anyone employed while the law was in effect.

Of course, the law on this subject has yet to be announced definitively in Alaska. Suffice to say that, even with a constitution which provides that employee retirement benefits are contractual, the Alaska Supreme Court has more than one path to follow. See, Annotation, 52 A.L.R. 2d 437 (1957).

There is a case which holds that a contract made under an ordinance which was subject to initiative and referendum was conditional to the extent that either might be used to repeal the ordinance. Duncan Parking Meter Corp. v. City of Gurdon, 147 F. Supp. 280 (D. Ark. 1956). But the holding depends on the peculiar facts of the transaction and the law of Arkansas, and it is not likely to be followed in Alaska. A constitution which vests employees with a right to accrued benefits without diminution or impairment is not likely to be interpreted as allowing their impairment by referendum. If the legislature may not repeal (without conferring off-setting benefits) neither may the people.

General Effect of Repeal by Referendum

In sum, the referendum on chapter 205, SLA 1975, will unquestionably create some difficulties if it results in the repeal of chapter 205. With respect to some matters covered by chapter 205, the repeal will be effective. As to them the pre-existing law will be revived. Dawson v. Tobin, 24 N.W.2d 737 (N.D. 1946). But with respect to others, constitutionally protected rights will have vested, and the repeal cannot impair them. The result would be, for example, that commissioners' salaries

will be restored to what they were prior to the effective date of chapter 205 but incumbent judges' salaries will not. The retirement benefits for some public employees will be governed by the revived, pre-existing law, but those for others (those in whom rights vested) will be governed by the provisions adopted by chapter 205, SLA 1975. It is fair to say that, if chapter 205 is repealed by referendum, there will be a confused legal situation at the least.

Alternatives Available to the Legislature.

Chapter 205, SLA 1975, was referred because of objections to several of its provisions. Specifically, these were (1) the amount of the legislative pay raise and, perhaps, the amount of the increase in legislative per diem; (2) the escalator effect of tying salaries of high ranking officials to the merit system salary scale; (3) the period for vesting of retirement benefits for elected public officials, and, perhaps, the increase in the amount of their retirement pay. It is possible, but doubtful, that the amount of the salary increase for justices, judges, and commissioners was also objectionable. Objections to the increases for incumbent judges are irrelevant, since nothing can be done. That the increase for commissioners triggered the referendum seems questionable, as the increase largely retained the status quo ante in relative salaries. There does not appear to have been serious objection to the other features of chapter 205.

The question is what, if anything, the legislature may do to alleviate this situation by eliminating the need for a referendum election and the legal problems that will result if the electorate repeals chapter 205, SLA 1975. Two things are immediately clear. First, if legislative action were taken in bad faith to evade the referendum, the action would be invalid. State v. Becker, 240 S.W. 229 (Mo. 1922); In re Opinion of the Justices, 174 A. 853 (Me. 1933); Leach v. State, 188 Pac. 118 (Okla. 1920) (dicta). 2/ Second, if the referred law is simply amended and not repealed, then the referred law, as amended, will go on the ballot. Klosterman v. Marsh, 143 N.W.2d 744 (Neb. 1966); Utah Power & Light Co. v. Ogden City, 79 P.2d 61 (Utah 1938).

Because the problem created by the referendum is the likely creation of different classes of judges and public employees based on arbitrary distinctions and because the referred law as amended might also be repealed by the referendum and lead to the same result, we would advise against amendment.

If the legislature wishes to take curative action, the case law on the subject indicates that the following steps are required:

2/ While the decisions in these cases are stated to be on other grounds, analysis indicates that they are predicated on an awareness that in those jurisdictions, unless it were held that the legislature may not repeal a referred act and enact a new one on the same subject, the legislature could totally frustrate the use of the referendum. The same is not true in Alaska. Unless the subject matter is not referrable, Alaska Constitution, art. XI, §7, any act of the legislature may be referred. Id. art. XI, §1.

First, a bill should be passed to repeal chapter 205, SLA 1975, specifying that in doing so the laws repealed or amended by chapter 205 are revived. The bill may then address the subject matter of those features of chapter 205 which were considered not objectionable, i.e., public employee retirement, judicial salaries, and perhaps, commissioners' salaries, and the legislature would be free to enact new legislation on those subjects identical to the provisions of chapter 205.

Second, if desired, a separate bill could be passed enacting legislation with substantial differences from those features of chapter 205, SLA 1975, which were obviously objectionable. These would not include the salary increases for the judiciary because--whether objectionable or not--they are not repealable with respect to incumbents absent a general reduction in salaries of all state officers. Alaska Constitution, art. IV, §13. The method for setting future judicial salaries could, however, be included, but that repeal may not be effective with respect to incumbent judges.

Both bills should act on the revived law, i.e., refer to the provisions of the Alaska Statutes as they existed prior to the enactment of chapter 205, SLA 1975.

The repeal of chapter 205, SLA 1975, would cause the referendum on it not to be held. Keigley v. Bench, 63 P.2d 262 (Utah 1936). Since the repeal and the revival of the old law would void chapter 205, there would be nothing more the referendum

could do. There would be nothing left to repeal. The legislature may then enact new legislation on the same subject which is substantially altered in a good faith effort to meet the objections made to the referred law. 3/

According to most courts, good faith is crucial to the legislature's acting on the subject matter of a referred act. Anderson v. City of Duluth, 155 N.W.2d 281 (Minn. 1967); Trumbull v. Ehrasam, 166 A.2d 844 (Conn. 1961); Gilbert v. Ashley, 209 P.2d 50 (Cal. App. 1949); Ex parte Statham, 187 Pac. 986 (Cal. App. 1920); Ginsberg v. Kentucky Utilities Co., 83 S.W.2d 497 (Ky. App. 1935). That "good faith" is basically to be determined by the words of the new law itself. Gilbert v. Ashley, 209 P.2d 50 (Cal. App. 1949). If substantial changes in the essential features to which objections arose have been made, and there is no attempt to evade the people's use of the referendum, good faith will be implied. Cf., Ginsberg v. Kentucky Utilities Co., 83 S.W.2d 497 (Ky. App. 1935).

None of the cases from other jurisdictions involved a finding that the legislature had acted in bad faith. But the implication is that an act taken in bad faith to evade a referendum would be held to be invalid. Anderson v. Duluth, supra; Trumbull v. Ehrasam, supra; Gilbert v. Ashley, supra;

3/ By placing those subjects which were objectionable in one bill and those which were not in another, the legislature will divide the subjects, and each can be considered separately by the public. Since, it is the repeal of the legislation on the unobjectionable subjects which would create the arbitrary distinctions and legal problems, separate treatment affords the best means of avoiding those problems.

Ex parte Statham, supra; Ginsberg v. Kentucky Utilities, supra. And in State v. Becker, 240 S.W.229 (Mo. 1922), where the court was confronted with an obvious bad faith effort to evade a referendum, the rule was adopted that the legislature was without authority to act on a referred law until after the referendum election. Since the legislature's good faith is to be determined from the words of its new enactment, truly substantial changes in the features which triggered the referendum would appear to be essential. See, Ginsberg v. Kentucky Utilities Co., supra; Anderson v. City of Duluth, supra.

Conclusion

In sum, it is our view that the legislature may avoid the legal problems which will result from an outright repeal by referendum of chapter 205, SLA 1975, by itself repealing chapter 205 and simultaneously enacting new legislation, in separate bills, one which will amend the pre-existing provisions of the law identically to the unobjectionable amendments made by chapter 205 and one which will amend the pre-existing law in a manner substantially different from the objectionable amendments made by chapter 205.

If chapter 205 stays on the referendum ballot and is repealed, the result will be, on the one hand, tremendously complex and nearly endless litigation of very uncertain result and, on the other, arbitrary distinctions among public employees with respect to their retirement. The procedure we have described will avoid that result and at the same time allow the public an opportunity to refer the new enactments if their essential features remain objectionable.

Yours very truly,

Avrum M. Gross
Attorney General

AMG:jeh

Add retirement

Introduced: 2/25/75
Referred: State Affairs and Finance

IN THE HOUSE BY GARDINER AND MILLER

HOUSE BILL NO. 203

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act creating the Alaska Salary Commission; prescribing its organization, powers and duties; and providing for an effective date."

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

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

CHAPTER 23. ALASKA SALARY COMMISSION.

Sec. 39.23.010. CREATION OF COMMISSION; COMPOSITION. (a) There is created the Alaska Salary Commission consisting of five members, none of whom may be public officers or employees except for the Com. of Admin. Appointees to the commission are not subject to legislative confirmation.

(b) ~~two~~ member of the commission shall be appointed each by the governor, one of which will be the Com of Admin. the chief justice of the supreme court, ~~the president of the University of Alaska,~~ one by the the president of the senate and the speaker of the house ~~of representatives~~. will each appoint One

(c) An appointee of the chief justice and the president of the university shall be registered to vote either as an "independent," "nonpartisan," or shall have "declined to state" his party affiliation when registering to vote.

Sec. 39.23.020. TERM OF OFFICE; VACANCIES. (a) Commission members serve at the pleasure of the appointing authority for four-year, staggered terms. However, three of the first members appointed to the commission shall serve two-year terms to be determined by lot at the first meeting of the commission.

(b) Vacancies shall be filled in the same manner as original ap-

pointment, and a person appointed shall serve the balance of an unexpired term.

Sec. 39.23.030. OFFICERS; STAFF. The commission shall select a chairman from among its members annually. The ~~director of the legislative finance division of the Legislative Budget and Audit Committee~~ Director of Division of Personnel shall serve as ex-officio secretary to the commission and shall provide all research, technical and administrative services. He shall record and transcribe the minutes of commission meetings and prepare all correspondence, meeting notices, reports and recommendations as directed by the commission chairman.

Sec. 39.23.040. MEETINGS; QUORUM. (a) A majority of the commission members present is sufficient to transact business to come before the commission. However, a majority of the commission members is necessary to approve the commission's recommendations to the legislature.

(b) The commission shall meet at the call of the chairman. Notice of meeting dates shall be mailed to each commission member at least 20 days before the date scheduled for a meeting.

(c) The commission shall meet to discuss its findings and recommendations at least twice before submitting its final report to the legislature under sec. 80 of this chapter.

Sec. 39.23.050. COMPENSATION. Members of the commission serve without compensation but are entitled to per diem and travel expenses authorized by law for boards and commissions.

Sec. 39.23.060. DUTIES. The commission shall conduct an on-going review of compensation for members of the legislature, the governor and lieutenant governor, (com, deputy com + division directors) and the judiciary to determine its appropriateness and report its findings and recommendations to the governor, the legislature and the judiciary. ~~include other states~~

Sec. 39.23.070. STUDIES; REPORTS. The commission may request

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reports or studies from any state department or agency concerning compensation of the governor, lieutenant governor, the members of the legislature or of the judiciary. A state department or agency from which that report or study is requested shall furnish it within a period of time prescribed by the commission.

Sec. 39.23.080. RECOMMENDATIONS. (a) Before December 1, 1976, and every two years thereafter, the commission shall submit its proposed findings and recommendations to the governor, the members of the legislature and of the judiciary and make them public.

(b) The commission shall adequately notify the public of its proposed findings and recommendations and receive & consider public comment before submitting a final report of its findings and recommendations to the legislature under (c) of this section.

(c) The commission shall make a final report of its findings and recommendations as to the rate and form of compensation for the governor, lieutenant governor, members of the legislature and of the judiciary during the first 10 days of the first regular session of a legislature. The recommendations shall become effective 45 days after presentation to the legislature or at the end of a session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(d) A commission member who does not concur in the proposed or final recommendations may attach written objections to the commission's report of its findings and recommendations.

Sec. 39.23.090. DEFINITIONS. In this chapter, "members of the judiciary" includes the justices of the supreme court and judges of the superior and district courts.

* Sec. 2. AS 22.05.140(a) is amended to read:

(a) The chief justice and each associate justice shall receive

annual [$44,000 ANNUALLY AS] compensation prescribed in accordance with AS 39.23. The compensation is payable monthly in 12 equal installments. Compensation of the chief justice or of an associate justice shall not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

* Sec. 3. AS 22.10.190(a) is amended to read:

(a) Each superior court judge shall receive annual [$40,000 ANNUALLY, AS] compensation prescribed in accordance with AS 39.23, payable monthly in 12 equal installments. The compensation of a judge shall not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

* Sec. 4. AS 22.15.220(a) is amended to read:

(a) Each district judge shall receive annual [$33,500 ANNUALLY AS] compensation prescribed in accordance with AS 39.23, payable monthly in 12 equal installments. The compensation of a judge shall not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

* Sec. 5. AS 24.15.010 is amended to read:

Sec. 24.15.010. LEGISLATIVE PER DIEM. The rate of per diem instead of subsistence for each member of the legislature is a rate prescribed in accordance with AS 39.23 [$35.00] for each day of a legislative session. The per diem is also payable for those days of necessary travel to and from sessions.

* Sec. 6. AS 24.15.020 is amended to read:

Sec. 24.15.020. ANNUAL LEGISLATIVE SALARIES. The annual salary for each member of the legislature is prescribed in accordance with AS 39.23 [$9,000] to be paid in approximately equal monthly installments [PAYMENTS]. The president of the senate and speaker of the house of representatives are each entitled to an additional sum prescribed in accor-

dance with AS 39.23 [$500] a year during tenure of office.

* Sec. 7. AS 24.15.030 is amended to read:

Sec. 24.15.030. ADDITIONAL ALLOWANCES. In addition, each member of the legislature is entitled to an annual allowance prescribed in accordance with AS 39.23 [OF $4,000] for postage, stationery, stenographic services and other expenses.

* Sec. 8. AS 39.20.010 is amended to read:

Sec. 39.20.010. ANNUAL SALARY OF GOVERNOR. The annual salary of the governor is prescribed in accordance with AS 39.23 [$50,000]. The salary shall be paid in equal monthly installments.

* Sec. 9. AS 39.20.030 is amended to read:

Sec. 39.20.030. ANNUAL SALARY OF LIEUTENANT GOVERNOR. The annual salary of the lieutenant governor is prescribed in accordance with AS 39.23 [$44,000]. The salary shall be paid in equal monthly installments.

* Sec. 10. The first appointments to the commission shall be made within 30 days after the effective date of sec. 1 of this Act.

* Sec. 11. Sections 1 and 10 of this Act take effect immediately in accordance with AS 01.10.070(c). Sections 2 - 9 of this Act take effect on the effective date of the first recommendations submitted to the legislature under AS 39.23.080(c).

02-0018 (REV. 08-73)

MEMORANDUM State of Alaska

TO: Avrum M. Gross
Attorney General

DATE: September 26, 1975

FILE NO:

TELEPHONE NO:

FROM: Robert M. Johnson
Assistant Attorney General

SUBJECT: Impact of Compensation-Retirement Referendum on 1976 Legislation

Chapter 205, SLA 1975 amended and enacted a number of statutes concerning compensation and retirement of state officers and employees. This bill is now subject to referendum vote on an election date following the 1976 legislative session. What impact would a successful referendum rejection of Ch 205, SLA 1975 have on legislation passed during the 1976 legislative session? Further, what impact would a successful referendum rejection have upon wages and benefits due state officers and employees covered by Ch 205, SLA 1975? This memorandum addresses these questions.

I. THE 1976 REFERENDUM ELECTION WILL NOT AFFECT 1976 LEGISLATIVE-SESSION ALTERATIONS TO SUBJECT MATTER COVERED BY CH 205, SLA 1975.

A referendum may be used to approve or reject acts of the legislature. Alaska Constitution Art. XI, §1. Rejection of a referred act voids all sections of the act. 1963 Op. Atty. Gen. No. 18. Would alterations to sections of the referred act also be voided by rejection through referendum? Alterations to a referred act could include simple amendment of sections of the act; repeal of certain sections of the act; or a repeal of certain sections and identical re-enactment of those sections. The Alaska Supreme Court has never addressed the impact of a referendum on these alterations. However, the court has held that referral of an ant does not suspend its effectiveness. An act is not voided until 30 days after its rejection in an election. Walters v. Cease, 388 P.2d 263 (Alaska 1964). This finding clearly implies, as will be demonstrated, that good faith alterations to a referred act are not subject to the referendum.

The Walters case clearly excludes judicial interpretations which prevent any legislative action on an act once it has been referred. These interpretations are based on the premise that an act's effectiveness is suspended by referral.

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See, for example, Ex Parte Haley, 210 P.2d 653 (Okla, 1949); State ex rel. Drain v. Becker, 240 SW 229 (Mo, 1927). Walters, of course, renders the suspension-of-effect theory inapplicable.

Some jurisdictions except amendments or repeal-reenactments of "emergency" measures from a general prohibition against legislative alteration of a referendum. Ex Parte Stratham, 187 P 986 (Cal App, 1920); First Continental S & L Ass'n v.D Directors, etc., 183 A.2d 347 (Mld, 1962). Frequently, courts have held that permissible alterations must be referred as part and parcel of the originally referred act. McBride v. Kerby, 260 P 435 (Ariz, 1927); Farris ex rel. Dorsky v. Goss, 60 A.2d 908 (Me, 1948). A limitation on the type of permissible alterations and a requirement that alterations, when permitted, must be referred concurrently with the original act suffer defects in the Alaskan context.

First, a restricting permissible alterations of an act, which in Alaska is effective even though referred, flies in the face of the legislature's inherent powers to enact, repeal, and amend all legislation. Constitution Art. II, §1; State ex rel. O'Connell v. Meyers, 319 P.2d 828 (Wash, 1957): legislative amendment of an initiative. In any case the "emergency" exception noted above has been flexibly interpreted to give the legislature broad deference. Ex Parte Stratham, supra; Gilbert v. Ashley, 209 P.2d 50 (Cal App, 1949).

Second, requiring alterations to be referred concurrently with the original act reduces the Alaska Legislature's flexibility in removing objectionable legislation. Since a referendum can reject all or none of an act, the good as well as the bad portions would be rejected. Further, the Alaska Constitution and statutes (AS 15.45.250 et seq) speak of referring specific acts of the legislature, not all acts dealing with the same subject matter. Here only Ch 205, SLA 1975 is being referred, not all legislative acts concerning retirement and compensation.

The effectiveness of a referred act under Walters and the legislature's inherent power to amend, repeal, and enact legislation give the Alaska legislature the tools to avoid popular rejection of all of the subject matter of Ch 205. owever, these tools are restricted to good-faith efforts intended to remove objectionable sections of a referred act. The tools must not be employed in a bad-faith effort to evade the referendum. Amendment and repeal with or without re-enactment of the same subject matter has been permitted, when in good faith, in jurisdictions with more restricted referendum pro-

visions than Alaska. Re Stratham, supra; First Continental S & L, supra; 42 Am Jur 2d 706-7; and 33 ALR 2d 1118, 1132-3 (and as supplemented). Since alterations are subject to the judiciary's inquiry into good faith — an inquiry giving broad deference to the legislature — the interests of the public are protected. In fact, the legislature's ultimate responsibility to the electorate was intended as the real check on the extent of the legislature's unrestricted amendment of initiatives. Ak Const. Conv. Minutes at 1084-7. The same check implicitly restricts legislative alteration of referred acts.

As presented above, a referendum election would consider only the original act referred. Subsequent amendments and repeals to the act would not be considered. Identical re-enactment of repealed sections would similarly not be subject to the referendum. Rejection of Ch 205, SLA 1975 would therefore have the effect of voiding only those sections of the act which remained unaltered by good-faith legislative modifications.

II. EFFECTS OF THE REFERENDUM AND/OR 1976 LEGISLATIVE AMENDMENTS ON WAGES AND BENEFITS.

Ch 205, SLA 1975 has specified effective dates for different classes of people. As noted in Walters v. Cease, supra, filing a referendum petition does not suspend an effective statute. As a legislative act currently in effect, Ch 205, SLA 1975 grants wages and benefits, some of which cannot be modified or abolished by a subsequent amendment or referendum.

A. WAGES AND BENEFITS CONFERRED ON CURRENT JUDGES CANNOT BE DIMINISHED BY REFERENDUM OR AMENDMENT.

Ch 205, SLA 1975 altered the compensation and retirement scheme for judges and justices. Wages and benefits may be raised for judges currently in office, but diminution of wages and benefits is unconstitutional. Art. IV, §13 provides:

> Justices, judges, and members of the judicial council and the commission on judicial qualifications shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.

Diminished compensation includes both wages and expected retirement benefits. Sylvestre v. State, 214 NW.2d 658, 666 (Minn, 1973). Any increases in benefits under Ch 205, SLA 1975 may not be reduced for office-holding judges by a later referendum or amendment. The referendum, like the initiative, is an injection of the public into the legislative branch such that the public

and the legislature are co-equal partners. Prohibiting diminution of compensation would therefore preclude a diminution by referendum as well as by legislation. Art IV, §13 prohibits diminution generally, without specifying the source of diminution. Thus, rejection of Ch 205, SLA 1975 by referendum (or modification by amendment) cannot effect those judges receiving the benefits of that act after its effective date. Only judges taking office after the referendum (or amendment) would be bound by a modification in their compensation.

B. MAY NON-JUDICIAL RETIREMENT BENEFITS CONFERRED BY Ch 205, SLA 1975 BE ALTERED.

Ch 205, SLA 1975 modifies existing terms for retirement benefits due state officers and employees. Rejection of Ch 205 by referendum would void the modification. The effect of the referendum, however, is subject to two constitutional guarantees. First, Alaska Constitution Art. XII, §7 provides: "Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired." Second, the U.S. Constitution, Art. I, §10 precludes a state from passing any "law impairing the obligation of contracts." These restrictions require a distinction between three classes of people affected by a referendum voiding an increase in expected benefits.

First. Those persons who have in fact retired after the effective date of Ch 205, SLA 1975 have a presently vested right which may not be cut off by a change in the law. The contract clause of the U.S. Constitution would prohibit such a change in expectation after the final act necessary to receive benefits. Even if the benefits so received are unfair or impose a heavy burden on the state, the U.S. Supreme Court has upheld a right which has ripened into a full contractual obligation. Lynch v. U.S., 292 U.S. 571 (1934). Sections 7 and 8 (Elected Public Officers Retirement Plan) of Ch 205, SLA 1975 take effect January 1, 1976; the remainder take effect on July 1, 1975. Thus, any person retiring after the applicable date and prior to the enactment of a modification cannot have his benefits reduced.

Second. Those persons who have more than five years of creditable service applicable to a state retirement plan have a "vested right" to defined benefits upon retirement. See, AS 39.37.020 (§8, Ch 205, SLA 1975); AS 39.35.380(a) (§11, Ibid.); AS 39.35.680(11) (§15, Ibid.), and other sections in effect prior to Ch 205, SLA 1975. A vested right to retirement

benefits assures the participant of an annuity-type of expectation. Chapter 205, SLA 1975 increases the amount and availability of these vested rights. A rejection of that act would return the holder of the vested right to the status he enjoyed when he entered into state employment. The readoption of the rights existing prior to Ch 205, SLA 1975 would not constitute an unconstitutional impairment of contract. Several theories support this argument:

(a) The employee entered into his employment with certain expectations. A subsequent increase in these expectations may be revoked. The employee did not bargain for these advantages when he entered into state service. Robinson v. Police Pension Bd. for City of Tucson, 339 P.2d 739 (Ariz, 1959).

(b) Even if an employee achieves a vested right in the additional benefits immediately upon the statute's effective date, the California courts have upheld the right of the state to make reasonable alterations in the amounts, terms, and conditions of benefits. Abbott v. City of Los Angeles, 326 P.2d 484 (Cal, 1958); Kern v. City of Long Beach, 179 P.2d 799 (Cal, 1947).

(c) Assuming rejection by referendum or legislative modification, no person will achieve five years of creditable service during the effective period of Ch 205, SLA 1975. Thus a vested right would not accrue in any situation. No person's expectation in achieving benefits under Ch 205, SLA 1975 would have ripened into a contractual right.

(d) Eliminating Ch 205, SLA 1975 would not diminish "accrued benefits" noted in Constitution Art. XII, §7. Employees in all cases could get the benefits earned under prior statutes, and would certainly not diminish a return on the employee's contribution. Art. XII, §7 guarantees that retirement pension schemes will be treated contractually rather than as a gratuity. However, under contract interpretation, no violation occurs in the rejection of Ch 205, SLA 1975 as it applies to non-retired employees with a "vested right" to defined benefits.

Third. Those persons who have not achieved five years of creditable service have no vested interest in retirement benefits. They do have, of course, a right to an undiminished return on their contributions. However, until they have achieved the final step which entitles them to retirement benefits —

that is, five years of service — their benefits are inchoate. Employees with an inchoate might have no cause of action whatsoever against a change in conditions, terms, and amounts of their benefits. McBride v. Retirement Brd., 199 A 130, 133 (Pa, 1938); Kern v. City of Long Beach, supra.

A rejection of Ch 205, SLA 1975 would have the effect of returning effected parties to the status quo ante. There would be no diminution in the contractual expectations and rights granted under the law pre-existing Ch 205. Only those persons who, in fact, retire during the existence of Ch 205, SLA 1975 would be free from a diminution of an increase.

§ 1.2.110

RMJ:jf

HB203 - Warwick; Petersen

& Judges will be reduced if initiative passed.

across the board

Judges (1) Dr. t will give letter on this subject
Analy list

(2) Federal National Labor Relations Board
list on employees

(3.) 205 sections for re-enactment
Sec 9 - 155 of SHA 205

ROUGH DRAFT

For an Act entitled: "An Act creating the Public Officers Compensation Board and relating to compensation and collective bargaining of public officers; and providing for an effective date."

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

* Section 1. AS 16.43.060 is amended to read:

Sec. 16.43.060. COMPENSATION OF MEMBERS OF THE ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION. Members of the commission are in the exempt service and shall receive an annual salary as established under AS 39.27.150 [EQUAL TO THAT OF A DISTRICT COURT JUDGE, PAYABLE IN EQUAL MONTHLY INSTALLMENTS].

* Sec. 2. AS 39.20.010 is amended to read:

Sec. 39.20.010. ANNUAL SALARY OF GOVERNOR. The annual salary of the governor shall be established under AS 39.27.150. [IS $50,000. THE SALARY SHALL BE PAID IN EQUAL MONTHLY INSTALLMENTS.]

* Sec. 3. AS 39.20.030 is amended to read:

Sec. 39.20.030. ANNUAL SALARY OF LIEUTENANT GOVERNOR. The annual salary of the lieutenant governor shall be established under AS 39.27.150. [IS $44,000. THE SALARY SHALL BE PAID IN EQUAL MONTHLY INSTALLMENTS.]

* Sec. 4. AS 39.20.080 is amended to read:

(a) The annual salary of the head of each principal executive department of the state upon appointment and confirmation shall be set out in [IS 10 PER CENT ABOVE STEP E, RANGE 28 OF] the salary

schedule established under AS 39.27.150 [IN AS 39.27.010 FOR ANCHORAGE, ALASKA. THIS SALARY SHALL BE PAID IN EQUAL MONTHLY INSTALLMENTS].

(b) The [MONTHLY] salary of the deputy head of each principal executive department of the state shall be set out in [, UPON HIS APPOINTMENT IS NOT LESS THAN STEP A, RANGE 28, NOR SHALL IT EXCEED STEP E, RANGE 28, OF] the salary schedule established under AS 39.27.150 [SET OUT IN AS 39.27.010, DURING THE TERM OF HIS APPOINTMENT.

* Sec. 5. AS 39.27 is amended by adding new sections to read:

ARTICLE 2. PUBLIC OFFICERS' COMPENSATION BOARD.

Sec. 39.27.100. BOARD ESTABLISHED. There is established within the Department of Administration a public officers' compensation board.

Sec. 39.27.110. MEMBERSHIP OF THE BOARD. (a) The board is composed of the commissioner of administration and four public members appointed by the governor and confirmed by the legislature in joint session. Initial appointments of two of the public members shall be made for terms of three years and two for six years to assure staggered terms. Subsequent appointments are for six-year terms. A vacancy 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) Public members of the board must be qualified electors of the state who are not employees or officers of the state. Not more than two public members may be of the same political party.

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

(d) A member of the board is entitled to the per diem allowance established under AS 39.20.180 and transportation expenses incurred in carrying out official duties.

(e) The commissioner of administration and two public members constitute a quorum for the transaction of business. A majority consisting of any three members is necessary in order to adopt a board determination to be transmitted to the legislature.

Sec. 39.27.120. POLICY OF THE LEGISLATURE. It is the policy of the legislature that the board determine the salary schedule for public officers based upon the following principles:

(1) equitable relationships shall be maintained among state positions;

(2) the classified, partially exempt, and exempt services shall be maintained as viable systems where collective bargaining is not employed; and

(3) the public shall be encouraged to provide input into the establishment of salaries for public officials.

Sec. 39.27.130. REPORT BY DIRECTOR OF PERSONNEL. (a) In order to carry out the policy established in sec. 120 of this chapter, the director of personnel shall prepare and submit to the board a report on the status and condition of the salary schedule used in compensating public officers of the state.

(b) In preparation of the report, the director shall consider:

(1) the effect of cost-of-living factors on the fairness of compensation paid public officers; and

(2) the competitive position of the state relative to salary levels, including fringe benefits, of comparable classes in private enterprise, in other government agencies throughout the state, and in other states constituting prime recruitment areas.

(c) The director shall use United States Department of Labor statistics or other reliable statistical data in carrying out his responsibilities under this section. If reliable statistics are not

available, the director shall gather acceptable data by the use of field studies in carrying out those responsibilities.

(d) The director shall make a report required by (a) of this section within 60 days after the effective date of this Act; subsequent reports shall be made each October 1.

Sec. 39.27.140. PUBLIC COMMENT. Public officers and members of the public may offer written or oral testimony to the board regarding proposed determinations.

Sec. 39.27.150. DETERMINATIONS BY THE BOARD. (a) After consideration of the report of the director of personnel, including the fiscal implications of the report, and other presentations as may be made to the board at public hearings or in writing, the board shall:

(1) make determinations as to appropriate adjustments in salary schedules for public officers;

(2) make determinations as to appropriate adjustments in benefits granted public officers.

(b) The board shall transmit its determination under this section to the legislature no later than the 10th day of each regular session of the legislature.

(c) The board may modify or reverse its determinations. Determinations become effective, retroactive to January 1, 45 days after transmittal to the legislature or at the end of a session, whichever is earlier, unless disapproved by concurrent resolution.

Sec. 39.27.160. "PUBLIC OFFICER" DEFINED. As used in secs. 100--160 of this chapter, "public officer" means all officers and employees in the executive branch of the state government who are not covered by a collective bargaining agreement negotiated under AS 23.40.

* Sec. 6. AS 42.05.091 is amended to read:

Sec. 42.05.091. COMPENSATION OF MEMBERS OF THE ALASKA PUBLIC UTILITIES COMMISSION. Members of the commission are in the exempt service and shall receive an annual salary as established under AS 39.27.150 [EQUAL TO THAT OF A DISTRICT COURT JUDGE TO BE PAID IN EQUAL MONTHLY INSTALLMENTS].

* Sec. 7. AS 42.06.090 is amended to read:

Sec. 42.06.090. COMPENSATION OF MEMBERS OF THE ALASKA PIPELINE COMMISSION. Members of the commission are in the exempt service deecribed in AS 39.25 and receive an annual salary as established under AS 39.27.150 [EQUAL TO THAT OF A DISTRICT COURT JUDGE TO BE PAID IN EQUAL MONTHLY INSTALLMENTS].

* Sec. 8. AS 42.07.071 is amended to read:

Sec. 42.07.071. COMPENSATION OF MEMBERS OF THE ALASKA TRANSPORTATION COMMISSION. The commissioners are in the exempt service under AS 39.25 and shall receive an annual salary as established under AS 39.27.150 [EQUAL TO THAT OF A DISTRICT COURT JUDGE PAYABLE IN EQUAL MONTHLY INSTALLMENTS].

* Sec. 9. AS 23.40.250 is repealed and re-enacted to read:

Sec. 23.40.250. DEFINITIONS. In secs. 70--260 of this chapter, unless the context otherwise requires,

(1) "collective bargaining" means the performance of the mutual obligation of the public employer or his designated representatives and the representative of the employees tc meet at reasonable times, including meetings in advance of the budget-making process, and negotiate in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or negotiation of a question arising under an agreement, and the execution of a written contract incorporating an agreement reached if requested by either party, but these obligations do not compel either party to

agree to a proposal or to make a concession;

(2) "confidential employee" means an employee who assista and acts in a confidential capacity to a person who formulates, determines or effectuates management policies in the area of collective bargaining;

(3) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in secs. 70--260 of this chapter;

(4) "labor relations agency" means the state personnel board with regard to the state and employees of the state, and means the Department of Labor with regard to all other public employees and all other public employees;

(5) "managerial employee" means a person who exercises significant responsibilities for the public employer in the area of policy formulation and who is not a confidential employee;

(6) "organization" means a labor or employee organization of any kind in which employees participate and which exist for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of employment;

(7) "public employee" means any classified employee of a public employer, except confidential employees, managerial employees, supervisory employees, and teachers and noncertificated employees of school districts;

(8) "public employer" means the state or a political subdivision of the state, including without limitation, a village, city, borough, district, board of regents, public or quasi-public corporations, housing authority or other authority established by law, and a person designated by the public employer to act in its interest in dealing with public employees;

(9) "supervisory employee" means an individual having substantial responsibility on behalf of the public employer regularly to participate in the performance of all or most of the following functions appoint, promote, transfer, suspend, discharge, evaluate or adjudicate grievances of subordinate employees, except supervisors aboard vessels of the Marine Transportation System;

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

* Sec. 10. AS 23.40.215 is repealed.

* Sec. 11. AS 39.27.010, 39.27.012, 39.27.015, 39.27.020, 39.27.022(c), 39.27.030, 39.27.035, 39.27.040, 39.27.045, and 39.25.150(2) are repealed.

* Sec. 12. Secs. 1--~~7~~ 4, 6-8, and 11 of this Act take effect on the effective date of the first salary schedule established under AS 39.27.150.

* Sec. 13. Sec. ~~8~~ 5 of this Act takes effect 30 days after certification of the results of the balloting for the referendum proposing the rejection of ch. 205 SLA 1975.

* Sec. 14. Secs. 9 and 10 of this Act take effect July 1, 1976.