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than thirty days. During the suspension, the employing department may make a thorough investigation of the cause and notify the employee and the Director of the reason for dismissal. All violations of the prohibitions set out in Rule 13 are considered "just cause" for dismissal (e.g. political activity; bribery; acceptance of gifts; existence of financial conflict of interest; fraud; nepotism; deception or obstruction of rights; etc.). PR 11 05.0.

### Demotion

Appointing authorities may demote employees for just cause and must supply a written statement of the reason for such action to both the Director and the employee. Employees have the right to request voluntary demotions to lower classes within their job series and maintain permanent status in the class to which demoted. PR 11 06.0.

## C. Collective Bargaining Contracts

### General Government Unit

GGU's contract provides that the union be notified in cases of demotion, dismissal, discharge and suspension of members. Art. 31(2). Provision is also made for employees receiving demotions, either voluntary or for just cause, to remain at the same wage step as held in the higher classification. Art. 18(3) and (4). "Just cause" is defined as incompetence, unsatisfactory performance of duties, unexcused absenteeism, drunkenness, dishonesty or gross disobedience. Art. 1(2)(k). All employees, with the exception of those discharged for "just cause", are required to receive written notification of the reason for discharge prior to termination. Suspended employees must also receive written notification of the reasons for such action. Employees who wish to have such action reviewed must follow the grievance procedures outlined in the contract. Art. 31(1). A grievance on demotion or dismissal may be brought to binding arbitration by an employee holding permanent status. Probationary employees may pursue a grievance on suspension, demotion or dismissal only to step four, and are denied access to binding arbitration. Art. 10(1). All grievances resulting from dismissal, demotion or a single suspension in excess of thirty days shall be entered at step three of the grievance procedures. Art. 10(2).

### Supervisory Unit

SU's contract contains the same provisions as those in GGU regarding notification of the employee and the union in cases of discharge, suspension and demotion. It also states that a union representative may be present during all stages of hearings determining such matters. Copies of written reprimands must be made available to representatives by employee request. Art. 25(2).

Members of SU who are demoted either voluntarily or for just cause retain the same wage step, a higher step or a step that best reflects creditable service to the state. Art. 16(6) and (8). Dismissed, demoted or suspended employees in permanent status have access to grievance procedures including binding arbitration. Art. 10(1).

#### Local 71

Local 71's contract recognizes management's right to discharge permanent employees for just cause (e.g. incompetence, unsatisfactory performance, unexcused absenteeism, etc.). The union is to be notified of the reason for the discharge of a permanent employee prior to the employee's notification. All permanent employees are given two weeks notice or pay prior to discharge, with the exception of those discharged for just cause.

All employees are to be supplied with a termination slip showing the specific reason for termination. Local 71 representatives must be notified in writing concurrent with notice to the employee of reasons for disciplinary actions, and union representatives have the right to be present at all hearings if requested by the employee. Employees holding permanent status have access to binding arbitration on matters concerning demotion, dismissal or suspension. Other employees have appeal rights through step three of the grievance procedures. Art. 12.

#### Public Safety Unit

PSEA's contract states that conduct unbecoming an officer is grounds for immediate dismissal. Otherwise, all employees must receive two weeks notice or pay prior to discharge. Permanent and temporary members of the union are required to give 30 days written notice before leaving employment, which may be modified by mutual agreement between the employee and the state. Art. 18(3) and (4).

The contract sets out detailed procedures governing the conduct of administrative investigations into a member's alleged misconduct, including the member's right to be informed of a complaint and its origin, union representation, time to prepare a response to allegations, a copy of the record of investigation proceedings and reassignment to "administrative" functions without loss of pay or benefits until the conclusion of the investigation. In addition, members may request an investigation into adverse rumors affecting the member's credibility, integrity or reputation. Probationary employees who have completed six months of the initial probationary period are protected by these rights, except in the case of dismissals. Art. 7.

Grievances relating to violations of PSEA's contract terms or involving demotion, discharge or suspensions may be brought to binding

arbitration. During the final six months of the probationary period, an employee may bring a grievance involving any disciplinary action other than dismissal to the Commissioner of Administration. Art. 10(1).

### Confidential Unit

CEA's contract states that in cases of discipline, suspension or demotion, CEA will be notified in writing concurrent with the commencement of such action. Employees who directly or indirectly exploit their connection with the employer through outside business activities or who disclose any confidential information pertaining to the employer's business are subject to immediate disciplinary action. Art. 11. Demoted employees must enter classifications at the same step as occupied in the higher range or a step approved by the Director of Personnel. Art. 12(3). The grievance procedure outlined in Article 13 is the sole method for settling disputes on suspension, demotion or dismissal, which are subject to binding arbitration.

#### D. Summary

It is generally recognized by the five union contracts that discipline, suspension, demotion and dismissal of employees for just cause is a management prerogative. However, the definition of just cause varies slightly in each contract. In most instances, members holding permanent status are provided access to grievance procedures up to and including binding arbitration.

## XII. HEARINGS AND APPEALS

### A. Statutes

The State Personnel Act provides that:

(a) An employee in the classified service who is dismissed, demoted, or suspended for more than 30 working days in a 12-month period shall be notified in writing by his employer of the action and the reason for it and may be heard publicly by the personnel board and may be represented by counsel at the hearing. In order to be heard, the complainant shall request a hearing within 15 days of dismissal, demotion or suspension.

(b) If the board finds that the action complained of was taken for a political, racial or religious reason, or in violation of this chapter or the rules adopted under this chapter, the officer or employee shall be reinstated to his position without loss of pay or leave benefits for the period of his dismissal, demotion, or suspension. In all other cases, the board shall report its findings and recommendations to both parties. AS 39.25.170.

The personnel rules shall provide for:

the procedures for review of disputed personnel actions and for resolving employee and interagency grievances. AS 39.25.150(18).

B. Personnel Rules

The dispute procedures for hearings and appeals outlined in PR 12 are available to employees in the classified service only. They are as follows:

- Step 1: The employee discusses the action grieved with immediate supervisor.
- Step 2: The employee submits a written statement to the supervisor.
- Step 3: The supervisor replies and submits a copy of the response to the departmental personnel officer.
- Step 4: The employee submits a written grievance to the personnel officer who transmits the information to the Division of Personnel.
- Step 5: There are two alternative methods for procedures at this point:
  - a. If the grievance is not a violation of an interpretation of the personnel rules and is within the discretion of the appointing authority, the departmental personnel officer and the employing division head investigate and make recommendations to the executive head of an agency.
  - b. If the grievance stems from violation of the personnel rules, the Director of the Division of Personnel responds with a written statement of findings to both the grievant and the department.
- Step 6: The agency head or a designated representative makes a decision.
- Step 7: The employee addresses the Commissioner of Administration requesting a hearing.
  - a. A grievance committee is formed to conduct a hearing, which submits a report to the employee's department and the employee's representative following the close of the hearing. (If the grievance is a result of a supervisor's mistake, the committee may order a copy of the decision rendered be placed in the supervisor's personnel file.)

Step 8: An appeal may be submitted to the Personnel Board following receipt of the grievance committee's report.

- a. The Personnel Board reviews and affirms, modifies or vacates findings. The Board may conduct a hearing and then submits a report in the same manner as the grievance committee.

Inter-agency disputes are settled by the appointing authorities representing agencies involved in the disputed personnel action. Final decision on such matters may be made by the Commissioner of Administration.

### C. Collective Bargaining Contracts

#### General Government Unit

GGU's contract sets out grievance procedures which supersede those in the personnel rules. The contract specifies the time limitations on filing grievances and subsequent responses. An employee must first bring a grievance to her or his supervisor, with or without GGU representation, for settlement (step 1). This step may be either verbal (informal) or written (formal) at the employee's discretion. If the dispute is not settled at the supervisor's level, the employee must present the dispute in writing to the division head, again with or without GGU representation (step 2).

If a settlement is not reached at step 2, an employee must seek GGU representation to pursue the grievance. The GGU representative presents an appeal to the Commissioner or head of the agency in question (step 3). Should a satisfactory decision still not be forthcoming, an appeal may be submitted to the Commissioner of Administration (step 4).

The final step is binding arbitration. Any grievance pertaining to the application or interpretation of GGU contract terms or an appeal of demotion or dismissal of an employee holding permanent status may be submitted to arbitration for settlement (step 5). The contract outlines arbitration procedures calling for an arbitrator from the U.S. Federal Mediation and Conciliation Service. Art. 10.

#### Supervisory Unit

The SU contract contains the same grievance procedures set out in the GGU contract. Art. 10.

#### Local 71

Local 71's contract provides grievance procedures similar to those outlined above. An employee initially files an appeal with the Steward, then with the executive head of the agency, and then with the Commissioner of Administration. Any grievance regarding the terms of the contract or the demotion or dismissal of a member may be brought to binding arbitration before an arbitrator from the U.S. Federal Mediation and Conciliation Service. Art. 13 and 14.

### Confidential Unit

CEA's contract also provides similar grievance procedures. The last alternative for settling a grievance is through the Board of Arbitration before an arbitrator of the U.S. Federal Mediation and Conciliation Service. Unlike the contracts discussed above, the CEA contract does not provide limits to the application of grievance provisions. Art. 13.

### Public Safety Unit

PSEA's contract sets forth varying levels to which an employee may carry grievance proceedings. Violations of the personnel rules or the operating procedures manual, involuntary transfers, written reprimands, and disciplinary grievances (except dismissal) of a probationary employee following the initial six month's of the term may be brought to the Commissioner of Administration for final decision. Grievances pertaining to discharge, suspension, demotion and disciplinary actions can be brought to binding arbitration when they are violations of the personnel rules, the operating procedures manual or contract terms. Art. 10(1).

Class grievances are initially submitted to the Commissioner of Public Safety. Art. 10(2). Time limitations are specified in PSEA's contract, as well as enumerated steps for settling grievances up to binding arbitration before a Federal Mediation and Conciliation Service arbitrator. Association grievances are filed with the Commissioner of Public Safety and may be brought to binding arbitration. Art. 10(5) and (6).

#### D. Summary

All of the collective bargaining contracts examined have grievance procedures superseding those set out in the personnel rules. The contracts generally outline five "steps" in which a grievance may be processed. The final step in all contracts is binding arbitration before an arbitrator from the U.S. Federal Mediation and Conciliation Service. Four contracts limit the scope of arbitration or to whom it is available (PSEA, GGU, SU, and Local 71), and one doesn't (CEA).

In comparing grievance procedures specified by contracts and the personnel rules, time frames do not appear to differ significantly. The personnel rules do not address binding arbitration, but union members must use the procedures outlined in their respective contracts for settlement of disputes.

### XIII. HOURS OF WORK

#### A. Statutes

The Personnel Act states that the personnel rules shall provide for the hours of work for employees and the methods and procedures covering

overtime work and pay, as well as for employees who work part-time at 15 hours or more a week, including two employees filling one permanent full-time position. AS 39.25.150(19), (20) and (24).

#### B. Personnel Rules

The appointing authority, with the Director's approval, is responsible for the establishment of reasonable working hours, which are not to be less than the minimum work week of 37½ hours. The normal work day consists of 7½ hours from 8:00 to 4:30, Monday through Friday. Overtime availability and compensation are subject to the policies established by the Commissioner of Administration. Holidays are enumerated in this section as well as the rules for following holidays and other rules and regulations that may be adopted by departments required to remain in operation on holidays. PR 7 07.0.

The equations for hourly, part-time and monthly rates are set out in the personnel rules. Part-time compensation is to be proportionate to the rates for full-time service, and actual time on the job is to be the basis for total remuneration. PR 9 03.0. Compensation for overtime may be in cash or in compensatory time off. A maximum of 300 hours of compensatory time may be accrued annually. Anything over that amount must be paid in cash, liquidated annually (unless the Commissioner of Administration approves an extension) and may be taken off when desired by the employee, with the appointing authority's approval.

#### C. Collective Bargaining Contracts

##### General Government Unit

GGU's contract states that the determination of employee eligibility for overtime must be in accordance with the Fair Labor Standards Act. A neutral hearing officer is appointed to determine such eligibility and has authority to make binding decisions. Normal working hours as specified by the contract are 37½ hours per week, and anything in excess of the normal week constitutes overtime, which is equalized among those employees who desire additional hours of work. However, it is recognized that the state does have the right to assign and require overtime when an individual's qualifications are necessary to accomplish a particular task. Art. 25(1) and (2).

Employees called back to work within four hours after completion of a shift are subject to recall provisions and the appropriate overtime rate, and employees remaining on call or those who must periodically report their whereabouts are entitled to standby provisions as designated in GGU's contract. Art. 25(3). Shift differentials and holiday provisions are set forth in the contract, which also limits the time an employee may be required to work to a maximum of 15 hours per day. Art. 25(4).

### Supervisory Unit

The SU contract contains terms requiring the state's compliance with the Fair Labor Standards Act in determining eligibility for overtime and sets out holiday, standby, recall and shift differential provisions. Art. 18.

### Local 71

Local 71's contract provides for overtime on both a daily and weekly basis. Regular working hours consist of 7½ hours per day and 37½ hours per week. Time and a half is paid for the first day worked in excess of 37½ hours, and double time is paid for overtime exceeding two or more days. An employee may not be required to work overtime, which is distributed evenly on the basis of seniority among those who desire it. Art. 22.

Shift differentials for swing and graveyard shifts, hazardous working conditions, recall and standby are provided for in 71's contract. Art. 23, Art. 24 and Art. 26(7) and (8). Working hours for members may be subject to certain variables such as tidal operations, a membership vote in favor of rotating multiple shifts or ferry travel time. Art. 26(2), (10) and (11). Holidays are also provided for in the contract. Art. 32.

### Public Safety Unit

PSEA's contract addresses the special interests and functions of its members in regard to overtime and related topics. Provisions are made for shift differentials, holidays, Field Officer Training differentials, standby, recall, early call-in, interruption of vacation, flexible posts, hazardous conditions and sea duty. Art. 15. Members cannot be required to work in excess of 15 hours within a 24 hour period and are entitled to a minimum of 8 hours between shifts. Art. 16(4) and (6). The normal work week is set forth as 37½, and PSEA's contract provides that overtime will constitute hours exceeding 7½ per day. Art. 15(16).

### Confidential Unit

CEA's contract states that the normal work week for members consists of 37½ hours, 7½ hours per day, Monday through Friday. Employee overtime eligibility is determined in accordance with the Fair Labor Standards Act guidelines for employees covered by the Act and by policy established by the Commissioner of Administration for those not covered. Holidays are specifically enumerated and the methods for following them. Clauses regarding recall, standby and the maximum hours that an employee may be required to work (16 hours within any 24 hour period) are contained in the contract. Art. 8.

#### D. Summary

All of the collective bargaining contracts studied contain provisions regarding the "normal" working hours for members (37½ hours per week and 7½ hours per day). Three contracts (PSEA, Local 71 and CEA) state that overtime consists of hours exceeding 7½ in any one day or 37½ in any week. Three contracts (GGU, SU and CEA) provide that overtime eligibility be determined in accordance with the Fair Labor Standards Act.

Guidelines are established by the contracts regarding shift differentials, standby, recall and other variables relating to employee working hours. Holidays are enumerated within each contract, which are identical to those set out in the personnel rules.

#### XIV. PAY

##### A. Personnel Rules and Statutes

The Director of the Division of Personnel and Labor Relations has responsibility for the state's pay plan in accordance with AS 39.25.150(2), which states that the personnel rules shall provide for:

the preparation, maintenance, revision, and administration by the director of personnel of a pay plan for all positions in the classified and partially exempt services; the pay plan shall be prepared after consultation with the appointing authorities or their designee, and with representatives of interested employee groups; the plan shall be based upon the position classification plan, shall provide for fair and reasonable compensation for services rendered, and shall be based on the principle of like pay for like work; commissioners' salaries are not the maximum limit for the pay plan and in exceptional circumstances higher salaries may be specified; the pay plan may provide for uniform starting pay, increments and area and time differentials; the pay plan prepared under this section may be amended, approved or disapproved by the legislature in regular or special session; after the pay plan is put into effect, no salary or wage payment may be made to a state employee covered by the pay plan unless the payment is in accordance with this chapter and the rules adopted under this chapter;

The application of the rules on pay depends upon funds being available. Various provisions within the rules address salaries for beginning, former, promoted, transferred and demoted employees; merit increases; hourly parttime and monthly rates as well as overtime compensation; compensatory time; and moving expenses (these topics are addressed in other portions of this study).

## B. Collective Bargaining Contracts

All of the contracts negotiated with the state set wage schedules for their respective memberships and provide for cost-of-living adjustments based on the Anchorage Consumer Price Index for multi-year contracts.

Also incorporated in the contracts are clauses pertaining to compensation and variables such as geographic differentials, shift differentials, hazardous working conditions, subsistence, recall and standby. Each collective bargaining contract has provisions that are unique to the functions of its membership.

### General Government Unit

GGU's contract states that members of the unit are to receive one and one-half their base salaries for hours exceeding 37½ per week. Employees called back to work within four hours after completion of a shift are entitled to overtime (recall), and those ordered to remain at home or to periodically report their whereabouts are entitled to receive 10% of their base salaries while assigned to a standby roster. Geographic and shift differentials are also included in computation of compensation of standby and recall. Art. 25(3). GGU members receive overtime pay for work on holidays and regular pay for holidays enumerated in the contract.

### Supervisory Unit

SU's contract also addresses standby, recall, shift differentials for both swing and graveyard shifts, and hazard pay. Art. 18 and 19.

### Local 71

Local 71's contract states that union members are entitled to time and one-half for the first day worked in excess of regular hours and two times their base salary for hours exceeding that limit. Any member working over 7½ hours per day is entitled to receive overtime. Art. 22. Shift differentials are provided to members for both swing and graveyard shifts at 3.75% and 7.5% of base salaries respectively. Art. 23. Members are entitled to hazard pay when working at excessive heights, handling explosives or traveling by helicopter. Art. 24. Provision is also made for standby and recall assignments. Art. 26(7).

### Public Safety Unit

PSEA's contract provides members with additional compensation for shift differentials, field officer training differentials, geographic differential, standay, recall, early call-in and hazardous working conditions. Other miscellaneous provisions encompass the unique responsibilities of the union's membership.

### Confidential Unit

CEA's contract provides that when members work swing or graveyard shifts, they are entitled to one or two step increases above normal pay ranges, respectively. Recall and standby service is defined, and payment for employee time is provided for by the contract. Art. 8.

#### C. Summary

Each collective bargaining contract contains a salary schedule for its membership and various provisions regarding compensation variables and overtime. Traditionally, salary negotiations are an integral part of the collective bargaining process and are emphasized by the provisions set forth in the contracts studied. There are many diverse factors that are taken into account regarding salaries, which have only been briefly noted above.

#### XV. CONCLUSION

There are, of course, many other provisions set forth in the five contracts studied relating to the interests of public employees. These topics (with the exception of leaves of absence, insurance, retirement, examination of records and moving expenses) are not addressed by either the Personnel Act or the personnel rules. They do, however, come under the category of "terms and conditions of employment", which are bargainable in accordance with the Collective Bargaining Act. AS 23.40.

The chart on the following page is designed to enumerate some of the additional topics addressed by the five collective bargaining contracts studied. It is by no means a comprehensive list of all provisions set out in the contracts.

## MISCELLANEOUS CONTRACT PROVISIONS

Negotiated Contracts Address:	GGU	SU	Local 71	PSEA	CEA
Insurance Benefits--Life, Health, Travel, Accident	*	*	*	*	*
Reimbursement for Job-Related Property Damage	*	*	*	*	
Employee Leave--Sick Leave, Leaves of Absence	*	*	*	*	*
Parking Privileges	*	*			*
Uniforms--Wearing Apparel	*	*	*	*	
Safety Equipment--Tools, First Aid Kits, etc.	*	*	*	*	*
Accessibility to Personnel Records	*	*	*	*	*
Length of Contracts	*	*	*	*	*
Right to "Exclusive Representation"	*	*	*	*	*
Union Leave Accounts	*		*	*	
Subsistence-- Long Term Per Diem By District	*	*	*		*
Subcontracting/Contracting Outside of Membership	*		*		
Time Off to Vote	*	*	*	*	*
Reimbursement of Moving and Travel Expenditures	*	*	*	*	*
Legal Assistance--Providing Defence for Legal Action Against Member as a result of Performance of Duties	*	*		*	*
Travel and Per Diem Allowances	*	*	*		*
Meal Allowances	*	*	*	*	*
Housing--Remote or Bush Areas			*	*	

REPORT OF THE  
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TO THE  
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February, 1981

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## INTRODUCTION

In 1978 the Alaska State Legislature created the Blue Ribbon Commission on the State Personnel Act and charged it with making a comprehensive review of the state personnel system. The commission was directed to consider refinements in light of collective bargaining and the growth of the number of state employees, to examine the question of the decentralization of the hiring of state employees, and to consider the deficiencies which had been revealed in reports from the Division of Legislative Audit and from the Ombudsman. See Appendix A, Legislative Resolve No. 27, 1978.

Since its inception, the commission has worked on the issues it was directed to consider, sponsoring legislation and making its recommendation known in annual reports to the legislature. In 1980, at the request of the commission, the legislature extended its life for another year, noting that because of the complex, inter-related nature of the issues facing the commission, more time was needed to resolve them. See Appendix B, Legislative Resolve No. 38, 1980.

Membership on the commission includes representatives from the groups and persons most concerned about the state personnel system. In addition to legislators, there are representatives from the public employee unions and associations representing state employees, from the Department of Administration and the Division of Personnel, from the Ombudsman, from state agencies, and from the public. This diversity and expertise enables the commission to fully consider the questions before it.

During the past year, the commission has focused on two main areas. It has concluded a comprehensive review of the State Personnel Act and also is recommending changes in the nepotism law of the state. In addition, testimony from retired Alaskans raised issues about the state retirement systems which the commission considered. As a result of this work, the commission is sponsoring three bills amending the retirement systems.

There are issues which the commission was unable to address this year which are discussed briefly in this report. Further study is needed before recommendations can be made on these topics. Because its work is not ended, the commission is requesting that the legislature extend its life for another year.

## CHAPTER I

### BILLS AMENDING THE STATE PERSONNEL SYSTEM AND THE RETIREMENT SYSTEMS

The commission is proposing two bills amending the personnel system. The first is a comprehensive revision of the State Personnel Act, to make changes in personnel practices, to expand the protections granted employees in the exempt and partially exempt services, and to make the Act consistent with the Public Employment Relations Act. The second bill amends the nepotism statute to give statutory authorization to support the present language of the Personnel Rules.

The commission is sponsoring three bills amending the state's retirement systems. The first limits the state's power to adjust retirement benefits where, through no fault of the retired state employee, the state has been making overpayments for more than two years. This measure is proposed because the resulting total overpayment can be substantial and the mandatory reduction of the retired person's monthly check can cause serious financial difficulties. The second bill sponsored by the commission makes changes in the membership of the Public Employee Retirement Board. The third bill requires that regulations adopted for both the Public Employee Retirement System and the Teachers Retirement System be subject to the Administrative Procedure Act.

SENATE BILL 193: AMENDING THE STATE PERSONNEL ACT  
(AS 39.25)

PURPOSE

The amendments proposed to the State Personnel Act are the result of work done by the commission over the past two years. The bill makes several major changes in the Act as well as making it more comprehensive, more consistent with the Public Employee Relations Act, and more clearly written.

The bill provides that those Personnel Rules which are matters of public policy are subject to the rule-making requirements of the Administrative Procedure Act. This will offer an increased opportunity for public comment before adoption of rules affecting the public.

The commission resolved the question of whether the state should move towards a centralized or a decentralized system of personnel administration by placing the present decentralized system in the Act. However, the bill limits the authority personnel officers presently have to operate independently from the Division of Personnel. Decentralization provides the best working relationship between the departments and the division.

Partially exempt and exempt employees of the state are granted increased protection from discrimination, including the right to appeal to the Personnel Board should they believe that they have been disciplined on the basis of unlawful discrimination.

In addition to these major changes, the bill makes a number of other amendments which are discussed in the analysis below.

#### SECTION BY SECTION ANALYSIS

Section 1. AS 39.040 is amended to read:

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

(SB 193, page 1, line 9)

#### Comment

This section makes a stylistic amendment to conform to the Manual of Legislative Drafting. The substance is not changed.

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

(b) Members of the board may not be (SHALL BE QUALIFIED ELECTORS OF THE STATE WHO ARE NOT) employees (OR OFFICERS) of the state. Not more than two members of the board may be members of the same political party.

(SB 193, page 1, line 17)

#### Comment

This section deletes the obsolete requirement that members of the Personnel Board be qualified electors of the state. It also eliminates the reference to officers. The definition of state employees in section 18 includes

state officers. (See section 18, page 34 infra)

Sec. 3. AS 39.25.070(1) is amended to read:

(1) approve or disapprove amendments to the personnel rules in accordance with AS 39.25.140 (THE ORIGINAL RULES OR A PART OF THEM WITHIN 60 DAYS OF THEIR SUBMISSION TO THE BOARD AND APPROVE OR DISAPPROVE AMENDMENT TO THE RULES WITHIN 30 DAYS OF SUBMISSION TO THE BOARD, AND IN CARRYING OUT THIS DUTY, THE BOARD, IF REQUESTED, MAY HOLD THE PUBLIC HEARINGS IT CONSIDERS NECESSARY);

(SB 193, page 1, line 22)

Comment

The bill transfers all of the substantive requirements for amending the Personnel Rules to AS 39.25.140 and proposes changes in those procedures. (See section 12, page 16, infra)

Sec. 4. AS 39.25.070(3) is amended to read:

(3) hear and determine appeals by employees (IN THE CLASSIFIED SERVICE) as provided in AS 39.25.170;

(SB 193, page 1, line 29)

Comment

Members of the partially exempt service may appeal to the Personnel Board in certain situations by case law. In addition, appeal rights are granted to partially exempt and exempt employees in cases of prohibited discrimination in the proposed amendments to AS 39.25.170. Therefore, the reference to the classified service in this paragraph is deleted.

Sec. 5. AS 39.25.070 is amended by adding a new paragraph to read:

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

(SB 193, page 2, line 3)

Comment

The Personnel Board does not have statutory authority for employing staff members at present. The proposed language places any employees of the board in the classified service. The members of the commission considered that Personnel Board employees should be protected from the possibility of arbitrary action or undue influence to which they might be exposed if they were placed in the partially exempt or exempt service.

Sec. 6. AS 39.25.080 is repealed and reenacted to read:

Sec. 39.25.080. PUBLIC RECORDS. (a) State personnel records, including employment applications and examination materials, are confidential and are not open to public inspection except as provided in this section.

(b) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

- (1) the names and position titles of all state employees;
- (2) the position held by a state employee;
- (3) prior positions held by a state employee;
- (4) whether a state employee is in the classified, partially exempt or exempt service;
- (5) the dates of appointment and separation of a state employee; and
- (6) the compensation authorized for a state employee.

(c) A state employee has the right to examine his own personnel files and may authorize others to examine his files.

(d) An applicant for state employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations.

(SB 193, page 2, line 6)

Comment

Current law provides that the state personnel records are public except for those which the rules require to be kept confidential. The Personnel Rules provide that except for examination materials, performance evaluations, personal history or other confidential materials so designated by the Director of Personnel, employee records are public records. (PR 14 07.0) The commission decided that it was more appropriate to indicate what materials actually are open to the public, and to make the remaining records confidential. The public materials are listed in subsection (b).

Subsections (c) and (d) set out new material to confirm a person's right to examine his own files and to establish when an applicant may review written examination materials.

Sec. 7. AS 39.25.090 is amended to read:

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

(SB 193, page 2, line 26)

Comment

Since amendments proposed to AS 39.25.170 extend limited appeal rights to members of the exempt service, the coverage of the chapter has changed.

Sec. 8. AS 39.25.110 is repealed and reenacted to read:

Sec. 39.25.110. EXEMPT SERVICE. Unless otherwise provided by law, the following positions in the state service constitute the exempt service and are exempt from the provisions of this chapter and the rules adopted under it:

- (1) persons elected to public office by popular vote or appointed to fill vacancies in elected offices;
- (2) justices of the supreme court, judges of the court of appeals, judges of the superior court, and judges and magistrates of other state courts established by law;
- (3) employees of the state court system, and employees and members of the Judicial Council;
- (4) employees of the state legislature and its agencies;
- (5) the head of each principal department in the executive branch;
- (6) officers and employees of the University of Alaska;
- (7) certificated teachers and noncertificated employees employed by a regional educational attendance area established and organized under AS 14.08.031 - 14.08.041 to teach in, administer, or operate schools under the control of a regional educational attendance area school board;
- (8) patients and inmates employed in state institutions;
- (9) persons employed in a professional capacity to make a temporary or special inquiry, study or examination as authorized by the governor, the legislature, or a legislative committee;
- (10) members of boards, commissions, or authorities;

(11) the officers and employees of the following boards, commissions and authorities:

(A) Alaska Commercial Fisheries Entry Commission;

(B) Alaska Gas Pipeline Financing Authority;

(C) Alaska Permanent Fund Corporation;

(D) Alaska Energy Center;

(E) Alaska Industrial Development Authority;

(12) the executive officer of the Alaska Commission on Post-secondary Education;

(13) the ombudsman and his staff;

(14) the executive secretary and legal counsel of the Alaska Municipal Bond Bank Authority;

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

(16) petroleum engineers and petroleum geologists employed in a professional capacity, the Department of Natural Resources except for those employed in the division of geological and geophysical surveys;

(17) officers, agents, and employees of the Alcoholic Beverage Control Board granted limited peace officer powers by the Alcoholic Beverage Control Board under AS 04.06.110;

(18) persons employed by the division of marine transportation as masters and members of the crews of vessels who operate the state ferry system and who are covered by a collective bargaining agreement provided in AS 23.40.040.

(SB 193, page 3, line 2)

Comment

The phrase "unless otherwise provided by law" is added to the introductory section. Obsolete or redundant paragraphs have been deleted and the list has been

reorganized for clarity.

Judges of the Court of Appeals have been added in paragraph (2). In paragraph (9), the wording has been changed from "temporary and special inquiry" to "temporary or special inquiry". For a table comparing the order and content of the new sections with the existing statute, see Appendix C.

Sec. 9. AS 39.25.120 is repealed and reenacted to read:

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

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

(SB 193, page 4, line 25)

Comment

The bill restructures AS 39.25.120 and changes the references to other sections of the State Personnel Act to conform to amendments made since this section was adopted and amendments proposed in the bill. The substance of the beginning section is not changed.

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

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

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

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

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

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

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

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

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

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

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

(A) Alaska Public Broadcasting Commission;

(B) Professional Teaching Practices Commission;

(C) Parole Board;

(D) Board of Nursing;

(E) Real Estate Commission;

(F) Alaska Royalty Oil and Gas Development Advisory Board;

(G) Alaska Historical Commission;

(H) Alaska State Council on the Arts;

(I) Alaska Police Standards Council;

(J) Council on Science and Technology;

- (11) Alaska Pioneers' Home managers;
- (12) hearing examiners in the Department of Revenue;
- (13) the comptroller in the division of treasury, Department of Revenue;
- (14) investment officers in the Department of Revenue;
- (15) the chief of subsistence in the Department of Fish and Game;
- (16) airport managers in the Department of Transportation and Public Facilities employed at the Anchorage and Fairbanks International Airports;
- (17) the deputy director of the division of tourism and the deputy director of the division of insurance in the Department of Commerce and Economic Development;
- (18) the executive director and staff of the Alaska Public Offices Commission.
- (19) the director, deputy director, personnel analysts II, labor relations analysts I, labor relations analysts II, senior negotiators, research directors of the division of labor relations in the Department of Administration.

(SB 193, page 5, line 8)

Comment

The bill adds deputy commissioners to paragraph (1) and makes specific reference to the assistant adjutant general of the Department of Military Affairs and to regional directors in the Department of Transportation and Public Facilities.

Paragraph (2) places all division directors in the partially exempt service. The State Personnel Act currently provides that division directors who are listed in the paragraph and any others designated by the Governor are members of the partially exempt service. Since the

Governor designates all division directors to be partially exempt, the commission considered the change to be appropriate.

Paragraph (9) is a new provision placing special assistants to commissioners in the partially exempt service. This reflects current practice. The commission considered that the number should be limited to two special assistants. If a commissioner needs more than two, the Personnel Board has the authority under AS 39.25.130 to add additional positions. (See section 10, page 16, infra)

Paragraphs (10)(A) - (E) and paragraphs (11) - (16) add several positions to the section. These positions are now in the partially exempt service but are not listed in the State Personnel Act. Similarly, paragraph (17) places the deputy director of insurance in the partially exempt service.

Paragraph (19) places those employees responsible for representing the state in collective bargaining negotiations in the partially exempt service. They are now in the classified service but are not members of any collective bargaining unit. The majority of the commission considered that it was important for these employees to be directly responsive to the policies of the administration.

For a table comparing the statute with the provisions of the bill, see Appendix D.

Sec. 10. AS 39.25.130(a) is amended to read:

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

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

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

(3) involves responsibilities and duties of a type not susceptible to the ordinary recruiting and examining procedures.

(SB 193, age 7, line 7)

Comment

The Personnel Board exercises the power to move positions from the classified service to the partially exempt service over positions created after April 19, 1960, as well as over positions created before that date. The commission considered this exercise of power to be appropriate and therefore the bill amends the statute by deleting reference to the dates.

Sec. 11. AS 39.25.130(c) is amended to read:

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

(SB 193, page 7, line 19)

Comment

As in section 10 above, the reference to dates in

AS 39.25.130(3) has been deleted since the Personnel Board has traditionally acted to change positions created after April 19, 1960, as well as those created before that date.

Sec. 12. AS 39.25.140 is repealed and reenacted to read:

Sec. 39.25.140. AMENDMENT OF PERSONNEL RULES. (a) The director of personnel shall prepare and submit proposed amendments of the personnel rules to the commissioner of administration for review and approval.

(b) The commissioner of administration shall review the proposed amendments and if he approves them, he shall submit them to the personnel board.

(c) When the proposed amendments are submitted to the personnel board, the commissioner of administration shall post notice in public buildings throughout the state that the personnel board has the proposed amendments under consideration.

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

(SB 193, page 7, line 24)

Comment

The bill makes several changes in AS 39.25.140. In subsections (a) and (b), the Commissioner of Administration is given the power to approve or disapprove amendments proposed by the Director of Personnel. In paragraph (d) those amendments which concern matters of public policy are made subject to the rule-making provisions of the Administrative Procedure Act. The State Personnel Act presently exempts adoption of the Personnel Rules from the APA. The commission found that additional opportunity for public notice and comment should

be provided over those subjects which affect the public and therefore recommends the change in the rule-making procedures. (Note that subsection (f) sets out topics which are included within "matters of public policy".)

(e) If the proposed amendments relate only to the internal management of the state agencies

(1) notice of the proposed amendments shall be posted for at least 30 days;

(2) if requested by the commissioner of administration or by a person receiving notice of the proposed amendments, the personnel board may hold public hearings on the proposed amendments and may appoint a hearing officer to conduct the hearings;

(3) the personnel board may amend the proposed amendments;

(4) the proposed amendments become effective 45 days after they are submitted to the personnel board unless the board has disapproved them;

(5) the amended rules shall be published in the Alaska Administrative Register and Code for informational purposes.

(SB 193, page 8, line 9)

#### Comment

Those amendments to the Personnel Rules which relate only to the internal management of state agencies are adopted under the procedures of this subsection. These procedures are substantially identical to those now set out in the State Personnel Act.

In paragraph (2) the bill permits the Personnel Board to appoint a hearing officer to conduct hearings on amendments. The Personnel Board is granted the power to amend the proposed rules in paragraph (3), a power which it does not now have.

The bill provides in paragraph (4), that the amendments take effect 45 days after submission to the Board, rather than the present 30 days. The additional time gives the board an opportunity to consider any written or oral testimony received from the public. Paragraph (5) requires that the amended rules be published in the Alaska Administrative Register and Code. Publication of the rules in the Code is discretionary now.

(f) In this section "matters of public policy" include, but are not limited to, matters concerning

- (1) recruitment;
- (2) examinations;
- (3) selection methods;
- (4) prohibitions and penalties;
- (5) public records;
- (6) eligible lists;
- (7) hours of work;
- (8) merit increases; and
- (9) hearings and appeals relating to matters listed in (1) - (8) of this subsection.

(SB 193, page 8, line 23)

Comment

The topics listed are those which the commission believed were of most concern to the public. Personnel Rules on recruitment, examinations, selection methods, and eligible

lists all affect members of the public if they apply for state employment. The prohibitions and penalties applying to state employees define their conduct and are important to all citizens of the state. The hours which state employees work are similarly of widespread concern as are merit increases.

Sec. 13. AS 39.25.150 is repealed and reenacted to read:

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

(1) the preparation, maintenance, and revision by the director of personnel, subject to approval of the commissioner of administration and the personnel board, of a position classification plan for all positions in the classified and partially exempt services; the position classification plan shall include

(A) a grouping together of all positions into classes on the basis of duties and responsibilities;

(B) an appropriate title, a description of the duties and responsibilities, training and experience qualifications, and other necessary position specifications for each class of positions;

(2) the preparation, maintenance, revision and administration by the director of personnel of a pay plan for all positions in the classified and partially exempt services; the pay plan (A) shall be based upon the position classification plan; (B) shall provide for fair and reasonable compensation for services rendered, and reflect the principle of like pay for like work; (C) may be amended, approved, or disapproved by the legislature in regular or special session; after the pay plan is in effect, a salary or wage payment may not be made to a state employee covered by the plan unless the payment is in accordance with this chapter and the rules adopted under this chapter or unless the payment is in accordance with a valid agreement entered into in accordance with AS 23.40;

(SB 193, page 9, line 6)

Comment

The bill restructures paragraphs (1) and (2) to make

their content clearer. In addition, paragraph (2) is amended to refer to the Public Employment Relations Act and to set out that it is legal for the state to pay employees in accordance with a collective bargaining agreement even if the agreement does not conform to the state pay plan.

Provisions in the State Personnel Act which specify that the pay plan be prepared after consultation with appointing authorities and employee representatives and that commissioners' salaries are not the maximum limit for the pay plan are deleted. There is nothing in the law to prevent the pay plan from providing for salaries exceeding those of commissioners. Since collective bargaining agreements between the state and employee representatives now set pay levels for almost all the classified employees, there is considerable consultation with employee representatives before salary levels are established.

(3) the use of employee selection methods which will fairly test the capacity and fitness of the person examined to efficiently discharge the duties of the class in which employment is sought;

(SB 193, page 10, line 3)

Comment

This paragraph is rewritten to more clearly state the standards for employee selection methods which the Personnel Rules will implement.

(4) the establishment and maintenance of eligible lists for appointment and promotion providing the names of eligible candidates in order of their relative performance in the examinations;

(5) the procedure for certifying eligible candidates;

(6) promotions from within the state service when there are qualified candidates in the state service; vacancies shall be filled by promotion whenever practicable and in the best interest of the state service and promotion shall be by competitive examination whenever possible; in considering promotions, applicants' qualifications, performance record, seniority, and conduct shall be evaluated;

(7) a period of probation not to exceed one year before an appointment to a position becomes permanent, except that a permanent employee receiving a promotional appointment retains permanent status in the service and job class from which appointed for the duration of the probationary period and may be demoted to a former class without right of appeal, notwithstanding AS 39.25.170, but if the employee is dismissed from the service the appeal rights under AS 39.25.170 apply;

(8) nonpermanent and emergency appointments to positions in the state service in accordance with AS 39.25.195 - 39.25.200;

(9) provisional appointment without competitive examination when appropriate eligible lists are not available;

(10) transfers from one department to another and from a other merit system jurisdiction to the state service;

(11) transfers from one area of the state to another;

(12) the payment of transportation costs when an employee transfers from one area to another at the request of the employer;

(13) the reinstatement of a person who resigns in good standing;

(14) layoffs for reason of lack of money or work, abolition of positions, or material changes in duties or organization; both performance and seniority records shall be considered in the development of layoff orders;

(15) the development, maintenance, and use of employee performance records;

(SB 193, page 10, line 6)

Comment

The bill reorders and rephrases paragraphs (4) - (15). The substance is unchanged. For a table comparing the bill with the Act, see Appendix E.

(16) the establishment of disciplinary measures which may include disciplinary suspension without pay;

(SB 193, page 11, line 11)

Comment

The State Personnel Act currently limits the imposition of disciplinary suspension without pay to 30 days in any 12-month period. The bill deletes that limit. The commissioner is continuing to work to develop a comprehensive framework of graduated disciplinary measures which will be more effective than the present system.

(17) the procedures for review of disputed personnel actions, and for resolving employee and interagency grievances, and for resolving grievances of the general public concerning the operation of the state personnel system;

(SB 193, page 11, line 13)

Comment

This paragraph is amended to require that the Personnel Rules include procedures for resolving grievances of the public concerning the state personnel system. These would include problems arising out of applying for state employment, state employment examinations, and the selection process.

(18) hours of work for all employees in the state service;

(19) methods and procedures covering overtime work and pay;

(20) the granting of employment preference rights to a veteran at each time application is made for employment not within the area of promotion, when the veteran possesses the necessary qualifications in the job classification applied for under this chapter; in the examination to determine the qualification of applicants for entrance into the classified service under merit system examination, five additional points shall be added to the passing grade of a veteran and ten additional points shall be added to the passing grade of a disabled veteran; if a position in the classified service is eliminated, employees shall be released in accordance with rules which give due effect to all factors; if all job qualifications are equal, the veteran shall be given preference over the nonveteran and the veteran shall be kept on the job; in this paragraph

(A) "veteran" means a person with 90 days or more active service in the armed forces of the United States who has been honorably discharged after having served during any period between April 6, 1917, and December 1, 1919, between September 16, 1940, and December 31, 1947, or between June 27, 1950, and November 7, 1975;

(B) "disabled veteran" means a veteran who is rated by the United States Veterans' Administration as having at least a 10 percent service-connected disability;

(21) the employment of persons in permanent positions on a part-time basis of 15 hours or more a week, including the employment of two persons to fill one permanent full-time position; these employees shall be designated as permanent part-time employees;

(22) the granting of employment preference to severely handicapped persons; this includes the right to provisional appointment without competitive examination for periods up to four months and the granting of eligibility to a severely handicapped person provisionally appointed under the rules who demonstrates ability to perform the job for permanent appointment without competitive examination; provisional employment under this paragraph may not exceed four months during a 12-month period; "severely handicapped" as used in this paragraph means persons certified by the director of the division of vocational rehabilitation to be severely handicapped;

(SB 193, page 11, line 17)

Comment

The bill reorders and rephrases paragraphs (18) - (22). The substantive content is unchanged. For a table comparing the bill with the Act, See Appendix E.

(23) the establishment of programs facilitating the employment of disadvantaged persons, including limitation of competition for appointment and promotion to individuals who meet the program requirements;

(SB 193, page 12, line 26)

Comment

This paragraph is added to the State Personnel Act to provide statutory authority for the adoption of Rules to implement programs such as the Comprehensive Employment and Training Act (CETA) or the Senior Community Service Employment Program (SCSEP). The language is taken from the Model Public Personnel Administration Law.

(24) the delegation, when feasible, of personnel responsibilities and duties to the principal departments of the executive branch;

(25) other rules and administrative regulations, not inconsistent with this chapter, which are necessary for its enforcement.

(SB 193, page 13, line 1)

Comment

The bill renumbers these paragraphs. They are identical with provisions in the State Personnel Act.

Sec. 14. AS 39.25.153 is repealed and reenacted to read:

Sec. 39.25.153. PERSONNEL OFFICERS. (a) If a principal depart-

ment of the executive branch has a personnel officer, the personnel officer shall be employed by and located within that department.

(SB 193, page 13, line 5)

Comment

Subsection (a) of the bill provides that personnel officers shall be departmental employees. This resolves the question of whether they should be centralized as employees of the Division of Personnel stationed in the individual departments, or whether they should be decentralized as employees of the departments they serve, in favor of decentralization. The commission considered that the working relationship of the personnel officer with the commissioner and staff of the department was crucial to his or her effectiveness and that this relationship could be impaired if he or she were not an employee of the department. Since not all departments have a personnel officer (the Department of Law does not), the bill does not require each department to have one.

(b) Subject to the provisions of (d) of this section, the personnel officers for the Departments of Transportation and Public Facilities, Fish and Game, Education, Labor, and Health and Social Services, have the following powers with respect to the classes of positions unique to their departments:

(1) to assign positions to an existing class in the state classification plan and to the salary range for that class as established by the state pay plan or by a valid agreement entered into in accordance with AS 23.40;

(2) to administer and score examinations and to place successful applicants on the eligible lists;

(3) to certify those eligible to the appointing authorities.

(SB 193, page 13, line 9)

Comment

This section of the State Personnel Act grants to the personnel officers for certain departments the power to amend the Personnel Rules for classes of employees unique to their departments. This power has never been used. The commission recommends that the actions which a departmental personnel officer may take independently from the Division of Personnel be more clearly and more narrowly defined and that they no longer have the power to amend the Personnel Rules.

This section does not change which personnel officers are granted authority to act under AS 39.25.153 except to delete reference to the Department of Highways and to substitute the Department of Transportation and Public Facilities. However, instead of giving the named personnel officers the power to amend the Personnel Rules, subsection (b) sets out the actions they may take. The commission considered that these are the areas where the ability to act quickly is most likely to be crucial to the success of a departmental program.

During the year the Director of Personnel has delegated the classification authority for some classes to certain personnel officers. This has been done under AS 39.25.150(21), which permits delegation of personnel

functions, rather than under this section. The agreement extends beyond the scope of AS 39.25.153 which is limited to positions unique to the department.

(c) The initial determination of classes of positions unique to the departments listed in (b) of this section shall be made by the personnel officer of the department in consultation with the commissioner of his department subject to the approval of the director of personnel in the Department of Administration.

(d) The assumption of a power set out in (b) of this section must be approved by the commissioner of administration and must be in harmony with the merit principle of personnel administration (AS 39.25.-010).

(SB 193, page 13, line 21)

Comment

Subsection (c) is taken from existing language in AS 39.-25.153. Subsection (d) is new language giving the Department of Administration some control over the actions of the personnel officers and emphasizing the importance of the merit principle of employment.

Sec. 15. AS 39.25.160 is repealed and reenacted to read:

Sec. 39.25.160. GENERALLY. (a) A classified employee or an exempt employee in a position named in AS 39.25.110(3) may not take an active part in the management of a political party above the precinct level.

(b) A person may not give, render, pay, offer, solicit, or accept money, services, or other valuable thing in connection with securing or making an appointment, promotion, or advantage in a position in the classified service.

(c) A person may not require an assessment, subscription, contribution, or service for a political party from a state employee.

(d) A person may not seek or attempt to use a political party endorsement in connection with an appointment or promotion in the classified service.

(e) An employee in the classified or partially exempt service who seeks nomination or becomes a candidate for state or national elective political office shall immediately resign any position held in the state service.

(SB 193, page 13, line 29)

Comment

That part of the existing AS 39.25.160(a) which grants political rights to state employees is placed in section 19 of the bill. (See page 35, infra)

All of these subsections have been rephrased for style, but their content is unchanged except as noted in the following comments.

The bill adds the phrase securing or making to subsection (b). The scope of subsection (c) is expanded to cover all state employees, not just those in the classified service. Subsection (e) extends the requirement for resignation when seeking nomination to political office to members of the partially exempt service.

(f) Action affecting the employment status of a state employee or an applicant for a position in state service, including appointment, promotion, demotion, suspension, or removal, may not be taken or withheld on the basis of unlawful discrimination due to race, sex, color, religion, national origin, age, or handicap.

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

ination due to political beliefs.

(SB 193, page 14, line 18)

Comment

Protection against discrimination in employment is extended by subsection (f) not only to classified service employees but to members of the partially exempt and exempt service. The categories of unlawful discrimination are increased from race and religion to include sex, color, national origin, age and handicap. The provision which protects members of the classified service from discrimination based on political beliefs is placed in subsection (g). The bill prohibits only unlawful discrimination.

(h) A person may not knowingly make a false statement, certificate, mark, rating, or report with regard to a test, certification, or appointment made under this chapter or in any manner commit a fraud preventing the impartial execution of this chapter and the personnel rules adopted under this chapter.

(i) A person may not obstruct the right of another person to examination, eligibility, certification, appointment, or promotion under this chapter.

(SB 193, page 14, line 28)

Comment

A requirement that a person act knowingly is added to subsection (h). Otherwise, these two subsections are not substantively changed.

Sec. 16. AS 39.25.170 is repealed and reenacted to read:

Sec. 39.25.170. HEARINGS AND APPEALS UPON DISMISSAL, DEMOTION, OR SUSPENSION. (a) An employee may be dismissed, demoted, or suspended by delivery of written notice of the proposed action and the reason for it from the appointing authority to the employee.

(SB 193, page 15, line 7)

Comment

This subsection adds to the statute a requirement that the notice of disciplinary action given to the employee be in writing. It also requires that the notice set out the reasons for the action.

(b) A permanent employee in the classified service who has been dismissed, demoted, or suspended may appeal the action to the personnel board.

(c) An employee who has been dismissed, demoted, or suspended due to unlawful discrimination based on race, sex, color, religion, national origin, age, or handicap may appeal the action to the personnel board.

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

(e) A permanent employee in the classified service who holds probationary status in his present position may appeal a dismissal from the classified service to the personnel board.

(f) An employee who is on leave without pay from a position in the classified service and who is employed by the state in another capacity, either in the exempt or partially exempt service, may appeal a dismissal from the classified service to the personnel board.

(SB 193, page 15, line 12)

Comment

These subsections set out the employees who are granted appeal rights.

Subsection (b) repeats the existing statutory provision.

Subsection (c) is based on the expanded scope of AS 39.25.160(f) which extends protection from unlawful discrimination to partially exempt and exempt state employees and expands the classes of people protected from discrimination.

Subsection (d) extends protection against disciplinary action based on political beliefs to classified employees who are not in permanent status as well as to permanent classified employees.

Appeal rights granted by AS 39.25.150(7) are repeated in subsection (e). Subsection (f) is based on current practice and is consistent with the rationale of subsection (e).

(g) An employee begins an appeal by filing a written request for review of the action with the personnel board within 15 days of receiving written notice of the action from the appointing authority.

(h) If requested by the employee at the time of filing an appeal, the personnel board shall hold a hearing to determine the reasonableness of the the action taken by the appointing authority. If the employee requests it, the hearing shall be open to the public. The employee may be represented by another person and has the right to present evidence. Technical rules of evidence do not apply to the hearing.

(SB 193, page 15, line 28)

Comment

These subsections set out existing provisions of AS 39.25.-170(a). The new language makes clear that an employee must request his appeal in writing, that the employee has the right to determine whether the hearing is open to the public, that the employee's representative need not be an attorney, and

that the technical rules of evidence do not apply to the proceedings.

(i) If the personnel board finds that the action complained of was due to unlawful discrimination based on race, sex, color, religion, national origin, political beliefs, age, handicap, or in violation of the provisions of this chapter or the personnel rules, the employee shall be reinstated to the position without loss of pay or leave benefit for the period of dismissal, demotion, or suspension. In all other cases, the board shall report its findings and recommendations to both parties.

(SB 193, page 16, line 9)

Comment

The substance of subsection (i) is found in AS 39.25.170(b). The new subsection repeats the expanded classes protected from discrimination to all of those listed in the new AS 39.25.160.

Sec. 17. AS 39.25 is amended by adding a new section to read:

Sec. 39.25.175. PROCEDURE. (a) A subpoena shall be issued at the request of a party to a proceeding begun under AS 39.25.170.

(b) If a person refuses to respond to a subpoena issued under this section, or refuses to testify at a hearing authorized by AS 39.25.170, the personnel board may apply to the superior court for an order requiring the person to respond to the subpoena or to testify.

(c) Failure to obey the order of the superior court requiring response to a subpoena or testimony at a hearing may be punished as contempt of court.

(SB 193, page 16, line 17)

Comment

The power to subpoena witnesses is already granted to the Personnel Board in AS 39.25.070(6). This new section sets out the procedures which the board may follow should

a person refuse to comply with the subpoena.

Sec. 18. AS 39.25 is amended by adding new sections to read:

Sec. 39.25.18.. DEFINITIONS. In this chapter,

(1) "fraud" means for a person to knowingly

(A) create or confirm another's false impression which the person does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression which the person previously has created or confirmed;

(C) prevent another from acquiring pertinent information;

(2) "knowingly" means for a person to be aware with respect to conduct or to a circumstance described by a provision of law that his conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is required, that knowledge is established if a person is aware of a substantial probability of its existence, unless he actually believes it does not exist;

(3) "precinct" means the territory within which resident voters may cast votes at one polling place;

(4) "state employee" means a person employed by the state who is paid a wage or salary, but does not include a person hired by the state to work as an independent contractor.

(SB 193, page 16, line 27)

Comment

The definition for "fraud" is taken from the Criminal Code definition of "deception", AS 11.81.900(b)(14), and is rewritten for use within the State Personnel Act. The definition for "knowingly" is also taken from the Criminal Code, AS 11.81.-900(a)(2), with amendments for use within the State Personnel

Act.

The definition for "precinct" is taken verbatim from the State Election Code, AS 15.60.010(17). The bill includes a new definition for "state employee".

Sec. 19. AS 39.25 is amended by adding a new section to article 6 to read:

Sec. 39.25.192. EMPLOYEE POLITICAL RIGHTS. A state employee may

- party;
- (1) be a member of a national, state, or local political party;
  - (2) take part in a political campaign;
  - (3) express political opinions;
  - (4) register party preference;
  - (5) serve as a voting or nonvoting delegate to a party convention;
  - (6) be appointed, nominated, or elected to nonpartisan public office in a local government unit; and
  - (7) make contributions to a political party or a candidate for public office.

(SB 193, page 17, line 20)

Comment

This section sets out the political rights listed in the present AS 39.25.160(a) with amendments for style. Paragraph (7) is added to clarify that state employees may make contributions to a political party or candidate.

Sec. 20. AS 39.25.180 is repealed.

(SB 193, page 18, line 5)

Comment

The Revisor of Statutes has determined that this section, which provides for the transfer of territorial employees to state employees, is obsolete. The commission agrees with her. Therefore, the bill repeals the section.

Sec. 21. This Act takes effect July 1, 1981.

(SB 193, page 18, line 6)

Comment

The commission recommends an effective date to insure a smooth transition from the existing practices to those set out in the bill.

SENATE BILL 194: RELATING TO NEPOTISM IN STATE EMPLOY-  
MENT.

PURPOSE

The present statute prohibiting nepotism in state employ-  
ment is directed at relatives of the executive head of a department or  
agency. It prohibits the employment of anyone related within the  
second degree of kindred to the executive head. However, the  
Personnel Rules also prohibit the employment of persons related within  
the second degree of kindred to the head of the division or subdivision  
within which the person is working. (PR 13 09.2). In addition, the  
Rule requires that before a person may be employed in the same agency  
with a close relative, that the Director of Personnel and the appointing  
authority for the department or agency must give express approval to the  
appointment. (PR 13 09.3)

The scope of the Personnel Rules is broader than the scope  
of the statute. The Attorney General has advised the Division of  
Personnel that the Rules are therefore not completely enforceable.  
The commission considered the issue and the majority recommends that  
the scope of the statute be enlarged to include the provisions of  
the Personnel Rules. While provisions against nepotism limit the  
opportunities of some Alaskans to find employment with particular  
offices in the state, the disadvantage to those people should be  
weighed against the appearance of impropriety and favoritism which  
is created if relatives of the head of a division or department

are working within that division or department.

The Director of Personnel advised the commission that in the past he has routinely approved waivers for relatives to work in a non-supervisory status in the same office. The majority of the commission recommends that requirement for review of these situations be placed in the statute to provide a mechanism for review should an instance of abuse arise.

#### SECTION BY SECTION ANALYSIS

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

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

#### Comment

This subsection prohibits the employment of a person related to the top-level managers of a department or agency. It encompasses the present substance of AS 39.10.010 and extends it to include deputy and assistant commissioners.

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

(c) A person may not be appointed to a position in a state department or agency in the executive branch, if that person is the spouse of, or is related by blood or marriage within and including the second degree of kindred to, an employee in the department or agency unless

the director of personnel and the person who makes the appointment approve the appointment in writing. An appointment prohibited by (a) or (b) of this section may not be approved under this subsection.

Comment

These subsections extend the scope of the statute to include the provisions of the Personnel Rule. Subsection (b) prohibits the employment within a particular division of persons related to the division director. It applies to all three branches of government.

Subsection (c) provides that before two close relatives may work in the same office in the executive branch of government, the Director of Personnel and the person who is making the hiring decision must both approve the appointment in writing.

Section 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

Comment

Because the state is operating without an effective nepotism law, the commission recommends that the bill take effect immediately.

SENATE BILL 195: LIMITING THE ADJUSTMENT OF RETIREMENT  
BENEFITS.

PURPOSE

This bill remedies a problem which the commission was advised of in testimony from a retired state employee. When the employee retired in 1976, she had been advised on four separate occasions by the staff of the Division of Retirement and Benefits that she was eligible for more than nine years of credited service with the state. Shortly after she retired the legislature amended the retirement laws and she was told that she would receive credit for an additional three years because of her military service. She began receiving retirement benefits on that basis.

In 1979 the division wrote to advise her that their original computations had been in error and that her years of employment with the University of Alaska could not be included in her credited service. Therefore, she had received over \$5000 in benefits which she would have to repay. They reduced the amount of her check by \$100 to be credited towards that overpayment, in addition to reducing the check to the amount she was actually entitled to receive. The basis for denying credit for the employee's period of service with the University of Alaska was a regulation adopted by the Division of Retirement and Benefits in 1978 -- two years after she had retired.

The employee appealed to the Public Employee Retirement Board, which can waive collection of overpayments in cases of hardship. In

determining whether there would be hardship to the employee, the board considered her family's financial situation and found that she was not entitled to the waiver.

Commission members discovered that this was not an isolated instance. A number of retired state employees have undergone similar experiences. They relied on assurances from the division of retirement and benefits only to discover a considerable time later that errors had been made and that their benefits would be reduced.

The commission recommends that a two-year statute of limitations be placed on the collection of overpayments. Two years gives the Division of Retirement and Benefits ample time to audit its records and find and correct any errors made. After that period of time, a retired person should be freed from the burden of having to pay back the state for mistakes of the state's employees. This protection should be available only in cases where the retired person did not contribute to causing the error. It should not apply to persons working for employers other than the state, since those employers may not be in a financial position to absorb the cost of errors made by state employees.

#### SECTION BY SECTION ANALYSIS

Section 1. AS 11.25.173 is amended by adding a new subsection to read:

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

(1) the incorrect benefit was first paid two years or more before the member or teacher or beneficiary was notified of the change

or error; and

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

Comment

This section amends the Teachers Retirement System by prohibiting the Division of Retirement and Benefits from decreasing benefits in order to collect for a previous overpayment if two conditions are met. The first condition is that the overpayment began two years or more before the division told the retired teacher of the error. The second condition is that the teacher did not cause the error.

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

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

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

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

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

Comment

This section amends the Public Employee Retirement System in the same way that section 1 amends the TRS. However, in this section there is an additional condition. The error in computation must relate to the employee's credited

service with the state, and not with another participating employer.

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

Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Comment

Section 3 makes the Act retroactive in order to include the retired person who testified before the commission. Section 4 provides that the Act takes effect immediately in order to address the hardship to retired state employees.

SENATE BILL 196 : RELATING TO THE MEMBERSHIP OF THE  
PUBLIC EMPLOYEES RETIREMENT BOARD.

PURPOSE

This bill amends the Public Employees Retirement Act to change the membership of the Public Employees Retirement Board. The law presently requires that the three members who are appointed to the Personnel Board shall also serve on the PERB. AS 39.35.030. Those three individuals are also, by statute, appointed to the Labor Relations Agency, which is involved in collective bargaining issues. AS 23.40.250(3). The activities of both the LRA and the PERB have grown considerably recently. In the last legislative session, the PERB was made responsible for overseeing the supplemental employee benefit program and the deferred compensation program for state employees. AS 39.35.040(9) and (10). The increase in the number of state employees who are members of collective bargaining organizations has led to additional work for the LRA. The three members of the Personnel Board are citizen volunteers appointed by the Governor who are not employed by the state.

While the issues which are addressed by the Personnel Board are related to some of the issues addressed by the Labor Relations Agency, this is not the case with the subjects of concern to the Public Employees Retirement Board. Therefore, the commission recommends that the members of the Personnel Board continue to serve as the members of the LRA and that they be removed from the PERB.

The PERB should be composed of four elected members and one member appointed by the Governor. In addition, the commission recommends that one of the elected members should be a retired person to insure that those most directly affected by the system have a voice in the decision-making body.

#### SECTION BY SECTION ANALYSIS

Section 1. AS 39.35.030(b) is amended to read:

(b) One (THREE) board member (MEMBERS) shall be appointed by the governor and shall serve at his pleasure (MEMBERS OF THE PERSONNEL BOARD OF THE DEPARTMENT OF ADMINISTRATION). The remaining four (TWO) board members shall be members of the system (AND) elected by the members of the system, and at least one of the elected board members shall be retired.

#### Comment

Section 1 of the bill sets out the changes in membership of the PERS board which are discussed above.

Sec. 2. Notwithstanding AS 39.35.030(b), as amended by sec. 1 of this Act, a person serving on the Public Employees Retirement Board on the effective date of this Act who was from the personnel board of the Department of Administration shall continue to serve until his successor is elected or appointed by the governor.

#### Comment

Section 2 is a temporary measure to enable the board to continue to act until new members have been selected according to the new method.

SENATE BILL 197: APPLYING THE ADMINISTRATIVE PROCEDURE  
ACT (AS 44.62) TO ADOPTION OF REGULATIONS  
BY STATE RETIREMENT SYSTEMS.

PURPOSE

This bill amends the law to require that both the Public Employees Retirement Board and the Teachers Retirement System administrators comply with the Administrative Procedure Act when adopting regulations. Both retirement systems are presently exempted from the APA. The commission recommends the change because of concern that regulations have been adopted in the past without adequate opportunity for public comment. Although rule-making under the APA may be more time-consuming than rule-making under the present methods of the retirement systems, the improved public notice requirements outweigh that disadvantage. In instances in which either retirement system is faced with a need for immediate change in regulations, the APA provides for emergency rule-making. AS 44.62.250.

SECTION BY SECTION ANALYSIS

Section 1. AS 39.35.042 is repealed and reenacted to read:

Sec. 39.35.042. REGULATIONS. Adoption of regulations under this chapter is subject to the Administrative Procedure Act (AS 44.62).

Comment

Section 1 of the bill amends the Public Employees Retirement System statute to make the PERS subject to the APA rule-making requirements.

Sec. 2. AS 14.25.022 is repealed and reenacted to read:

Sec. 14.25.022. REGULATIONS. Adoption of regulation by the administrator under this chapter is subject to the Administrative Procedure Act (AS 44.62).

Comment

Section 2 amends the Teachers Retirement System statute to make the TRS subject to the APA rule-making requirements.

## CHAPTER II

### UNRESOLVED PERSONNEL ISSUES

A number of the issues in the state personnel system continue to be of concern to the commission. There has not been time to address them fully during the past year.

#### NONPERMANENT CATEGORY OF EMPLOYEES

The passage of the nonpermanent law ended many of the difficulties which had existed with the temporary category of employees. However, the nonpermanent law brought about a significant change in the system for employing short-term workers for the state. Problems remain to be resolved in the fine-tuning of that system. Recently, the commission was advised of one aspect of these problems.

The Department of Fish and Game employs a number of people during the summer months to inventory the wildlife resources of the state. The length of employment can be as short as three weeks. Before the nonpermanent law was passed, these positions were classified as temporary positions. Last year, the department changed them to permanent seasonal positions. With the change from temporary to permanent seasonal, the department was, for the first time, required to fill the positions from the state's registers (the list of eligible applicants for positions). In the past, many of these positions had been filled by local residents. However, the local residents are not as likely to apply for the positions and to be placed within the top five candidates on the register as are college students looking for summer work. This had led to a decrease in local hire.

The issues which this situation raises include whether positions of this kind should be classified as permanent seasonal, and, if not, how they should be incorporated into the nonpermanent category of employees. The commission expects to discuss these issues during its ensuing meetings and to fully review the state's experience with the nonpermanent law.

#### APPLICATION PROCESSING BY THE DIVISION OF PERSONNEL

It takes an average of about six weeks for an application for state employment to be evaluated and the applicant advised whether he meets the minimum qualifications and to be scheduled for any examination required for the job class applied for. This is an average time and the actual time varies considerably based on the job class applied for and the place where the application is submitted. While the six weeks delay

is lower than previous averages, it is longer than it should be. In addition, the division expects to receive an increased number of applications during the summer months, and this increase will probably lead to a longer processing time.

The division has advised the commission of steps it is taking to automate part of the application system, so that record keeping will be done automatically and it will be easier to track the progress of an application. The commission encourages the division to do all that it can to improve the situation. The commission will continue to consider the issue.

#### MEMBERSHIP IN THE EXEMPT AND PARTIALLY EXEMPT SERVICES

Membership in the exempt and partially exempt services is established by the State Personnel Act. In its revision of the Act, the commission does not make substantial changes in that membership. However, it continues to be concerned about agencies whose employees might more appropriately be placed in the classified service and subject to the merit principle of employment. The commission has urged the Governor to continue to examine this question, and where appropriate, to move employees into the classified service.

#### DISCIPLINARY SYSTEM FOR STATE EMPLOYEES

Neither the State Personnel Act nor the Personnel Rules provide a comprehensive system of disciplinary measures for state employees. The Act does include a statement that the Rules shall provide for the imposition of disciplinary suspension without pay for not longer than 30 days in a 12-month period. AS 39.25.150(17). The Act also makes willful violation of the State Personnel Act or the Personnel Rules grounds for conviction of a misdemeanor. Following conviction, a state employee immediately forfeits his office or position. AS 39.25.210.

The commission is working towards the development of a disciplinary system which would guide supervisors so that all state employees receive fair and consistent treatment which corrects problems where possible and encourages an effective, motivated work force.

#### REVISION OF THE PERSONNEL RULES

The commission continues to recommend that the Personnel Rules be comprehensively revised to bring them into accord with modern personnel practices. Issues which should be addressed in the revision include the use of block scoring and the application and selection procedure for state employment, especially for rural positions. The Rules should also indicate the extent to which they are affected by collective bargaining.

SENATE CONCURRENT RESOLUTION 10: EXTENDING THE LIFE OF THE  
BLUE RIBBON COMMISSION ON THE STATE  
PERSONNEL ACT.

PURPOSE

As noted in the previous sections, there are a number of issues which the commission has not been able to resolve in the time available to it. The commission requests that its operation be extended for another year so that it can continue with the projects it has begun. Therefore, it is introducing Senate Concurrent Resolution No. 10. A fiscal note for the resolution is included as Appendix F.

TEXT

WHEREAS in 1978 the legislature through Legislative Resolve No. 27 authorized the Legislative Council, in cooperation with the director of personnel, to form a "blue ribbon" commission to study the State Personnel Act; and

WHEREAS the commission was formed as authorized by the resolution, made its report to the First Session of the Eleventh Legislature, and, in response to the commission's request for additional time to study problems it had identified, was funded by the legislature for a second year; and

WHEREAS in 1980 the commission made its second report to the legislature, and the legislature through Legislative Resolve No. 38 authorized the commission to continue to perform the assignments made to it by 1978 Legislative Resolve No. 27; and

WHEREAS the commission is continuing to develop answers to the issues

it has identified and more time is needed to complete the task which it was assigned;

BE IT RESOLVED by the Alaska State Legislature that the Blue Ribbon Commission on the State Personnel Act is authorized to continue to perform the assignments made to it by 1978 Legislative Resolve No. 27, through June 30, 1982.

APPENDICES

## STATE OF ALASKA

## THE LEGISLATURE

1978

Source

SCR 88 am HLegislative  
Resolve No.27

Directing the Legislative Council to carry out certain studies.

**BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

The legislature has determined that the laws of the state found in Title 4, Alaska Statutes, and relating to the sale and dispensing of alcoholic beverages, are in serious disarray. This disarray is the result of patchwork amending over several decades and as a result the laws are very difficult to administer effectively and defy constructive amendment on a piecemeal basis. This small but important body of law is overdue for a substantive revision. A revision project would involve a thorough review of the policies involved and a comprehensive re-arrangement and rewording of the laws to make effective administration possible and to facilitate legislative amendment in the future.

The Senate Special Committee on the Revision of Title 4 of the Alaska Statutes (Alcoholic Beverages) will expire with other special committees at the end of the regular session, but the legislature finds that the subject matter before it will require interim attention between adjournment and the convening of the next legislature.

**BE IT RESOLVED** by the Alaska State Legislature that under provisions of AS 24.20.090 and Uniform Rule 48(c) the Legislative Council is directed to establish a joint interim committee of the council to continue the special committee's work and accomplish a substantive revision of Title 4, Alaska Statutes (Alcoholic Beverages) during the 1978 interim; and

**WHEREAS** the State Personnel Act (AS 39.25) of the State of Alaska represents a considerable and vital body of law which has not undergone substantive revision and is consequently vastly

out of step with personnel developments of the last decade; and

WHEREAS the advent of collective bargaining and the tremendous growth in the number of state government employees require refinement of the personnel system; and

WHEREAS investigations by the legislative audit division and the office of the ombudsmen have revealed major deficiencies in the present personnel system; and

WHEREAS it is impossible during the course of a legislative session to devote the necessary time required to study and refine the Personnel Act;

BE IT RESOLVED by the Alaska State Legislature that the Legislative Council, in cooperation with the director of personnel, is authorized to form a "blue ribbon" commission to study and refine the State Personnel Act and to investigate the feasibility of decentralizing the hiring of employees and a method for regularizing the hiring of specialists who, because of higher comparable salaries in the private sector for the skills involved, must be paid at levels in excess of the salary schedule, and to submit the First Session of the Eleventh Legislature a proposed revision of the State Personnel Act based on the commission's recommendations; and be it

FURTHER RESOLVED that the membership of the commission should be representative of all persons and groups vitally concerned with the personnel system; and be it

FURTHER RESOLVED that the Legislative Council is authorized to contract with a competent person or firm knowledgeable in the varying aspects of personnel administration to oversee and direct the work of the commission.

## STATE OF ALASKA

## THE LEGISLATURE

1980

Source

Legislative  
Resolve No.SCR 5038

Extending the life of the Blue Ribbon Commission on the State Personnel Act.

**BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

WHEREAS in 1978 the legislature through Legislative Resolve No. 27 authorized the Legislative Council, in cooperation with the director of personnel, to form a "blue ribbon" commission to study the State Personnel Act; and

WHEREAS the commission was formed as authorized by the resolution, made its report to the First Session of the Eleventh Legislature, and, in response to the commission's request for additional time to study problems it had identified, was funded by the legislature for a second year; and

WHEREAS additional time is needed to study the complex, interrelated problems which the commission has identified;

BE IT RESOLVED by the Alaska State Legislature that the Blue Ribbon Commission on the State Personnel Act is authorized to continue to perform the assignments made to it by 1978 Legislative Resolve No. 27 through June 30, 1981.

## TABLE OF COMPARISON - AS 39.25.110

<u>EXISTING</u>	<u>PROPOSED</u>	<u>COMMENT</u>
(1)	(1)	
(2)	(2)	Adds judges of the court of appeals
(3)	(3)	Rephrased - content the same
(4)		Deleted - encompassed within (4) of proposed
(5)	(4)	Rephrased - content the same
(6)	(5)	
(7)	(6)	Rephrased - content the same
(8)	-	Deleted - There are no longer schools operated by the state
(9)	(8)	
(10)	(9)	Change in line 16 to read "temporary or special inquiry"
(11)	(10)	"Unless otherwise provided by law" moved to subsection (a) (page 2 lines 23-24) and therefore deleted here.
(12)	(18)	
(13)	-	Deleted - included within proposed (10)
(14)	(12)	
(15)	(10) & (11)(A)	
(16)	(13)	
(17)	(10) & (14)	

AS 39.25.120 (continued)

<u>EXISTING</u>	<u>PROPOSED</u>	<u>COMMENT</u>
(8)	(17)	The proposed paragraph includes the deputy director of insurance, who is in the partially exempt service but not listed in the present statute.
(9)	(2)	
(10)	(6)	
(11)	(7)	
(12)	(18)	
(13)	(3)	
(14)	(10)(G)	
(15)	(10)(H)	
(16)	(10)(I)	
(17)	(10)(J)	
(18)	(8)	
--	(9)	All special assistants to commissioners are in the partially exempt service. The commission set a limit of two special assistants for each commissioner. Where appropriate, the Personnel Board has the authority to approve additional special assistants.
--	(10)(A)-(E) and (11)-(16)	All of these positions are in the partially exempt service but are not listed in the present statute.

## TABLE OF COMPARISON - AS 39.25.150

<u>EXISTING</u>	<u>PROPOSED</u>	<u>COMMENT</u>
(1)	(1)	Restructured - content unchanged
(2)	(2)	Some deletions of unnecessary material. The proposed version adds the phrase "or unless the payment is in accordance with a valid agreement entered into in accordance with AS 23.40;"
(3)	(3)	New language to more clearly express what "sound employee selection methods" means. The existing paragraph states: The use of sound employee selection methods, including open competitive examinations to test the fitness of applicants for positions in the state service;
(4)	(6)	
(5)	(4)	Rephrased - content unchanged
(6)	(5)	
(7)	(7)	Rephrased - content unchanged
(8)	(8)	The proposed paragraph combines existing paragraphs (8) and (9)
(9)	(8)	
(10)	(9)	
(11)	(10)	
(12)	(11)	
(13)	(12)	
(14)	(13)	

AS 39.25.150 (continued)

<u>EXISTING</u>	<u>PROPOSED</u>	<u>COMMENT</u>
(15)	(14)	Rephrased - content unchanged
(16)	(15)	Rephrased - content unchanged
(17)	(16)	The proposed version deletes the 30-day limit to disciplinary suspension without pay.
(18)	(17)	The proposed version adds a requirement that the Personnel Rules provide procedures for resolving citizen grievances.
(19)	(18)	
(20)	(19)	
(21)	(24)	
(22)	(25)	
(23)	(20)	Restructured for clarity - the content is unchanged
(24)	(21)	
(25)	(22)	
--	(23)	This paragraph is added to make clear that the Personnel Rules can provide for programs such as CETA and the Senior Community Service Employment Program. The language is taken from the Model Public Personnel Administration Law.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE CONCURRENT RESOLUTION NO. 10  
 Title Extending the life of the Blue Ribbon Commission on the State Personnel Act  
 Requested by Senator Bill Ray Date 02/18/81

II. FISCAL DETAIL

Agency Affected Legislative Affairs  
 Program Category Affected General Government  
 BRU, Program, or Subprogram(s) Affected Legislative Council  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		77.9				
200 TRAVEL		25.0				
300 CONTRACTUAL		5.0				
400 COMMODITIES		1.2				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS CLAIMS, ETC						
<b>TOTAL</b>		<b>109.1</b>				

FUNDING (Thousands of Dollars)

GENERAL FUND		109.1				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		2				
PART TIME						
TEMPORARY						

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

Continuation of present staff and activity:

One Admin. Asst. full-time \$ 50,730  
 One Secretary full-time 27,210  
 v/benefits \$ 77,940

Travel - Staff and Commission  
 Estimate 10 members per meeting at \$ 25,000  
 \$500 travel & per diem per trip for five trips

Contractual - phone, public notices, etc. 5,000  
 Commodities 1,200

**TOTAL \$ 109,100**

IV. DATE 2/19/81

PREPARED BY Richard D. Berg  
 AGENCY Legislative Affairs Agency  
 PHONE 465-3850

Original Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

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# ALASKA PUBLIC EMPLOYEES ASSOCIATION

\*\*\*\*\*  
State Headquarters: 340 North Franklin Street, Juneau, Alaska 99801 • Tel: (907) 586-2334

TO: Senate State Affairs Committee

FROM: Darlene S. Livermore *DL* for Cherie Shelley,  
Executive Director

SUBJECT: Senate Bill No. 194  
Opposition Statement

DATE: April 23, 1981

The current Alaska Statute 39.10.010 provides that it is unlawful for a person who is a spouse, or related by blood within the second degree of kindred (cousins, aunts, uncles) to the executive head of principal state department commissioner to be employed by that department.

SB 194 attempts to place a modified form of existing Personnel Rules, derived through the authority of 39.25.150, into statute. More importantly SB 194 appears to create a major inconsistency with AS 18.80.220. AS 18.80.220 provides that it is an unlawful employment practice to refuse employment or discriminate against an employee, because of marital status or changes in marital status (emphasis added). APEA believes that with the number of working couples working for the State of Alaska, often within the same department, there seems to be no valid reason for such discrimination.

With the Civil Service Reform Act of 1978, the federal government repealed its 97-year-old "members of family restriction" statute that prohibited employment of relatives in certain situations. Instead, the remaining regulation (Section 310 of Title V of the US Code), passed in 1968, is directed at abuse of power by elected officials. This nepotism statute prevents a public official or a member of Congress from appointing or promoting family members.

The formal government stance, backed up by a 1966 addition to Title V of the US Code, prohibits discrimination because of sex and marital status. Evidently it's effective. Under President Carter, eight married couples held jobs, with combined salaries of up to \$100,000.

State Senate Affairs Committee  
April 23, 1981  
Page Two----

Similar nepotism rules apply on the state level. For instance, Oregon is one of the few states with a law that prohibits discrimination based on family relationships.

Some other states do not have a real problem with nepotism in state employment. There are several reasons for this. In urban areas, in the lower 48, jobs are plentiful in many fields - professional, industrial and with private companies in a variety of office positions. Spouses and relatives, not necessarily through design, find themselves working in diverse fields, probably across town from each other.

Employment in Alaska is not diversified. Most job opportunities are available in only a few categories - namely, government, fishing and the oil industry. As a result, especially in the rural areas, or even in Juneau, geographic isolation, low population concentration and lack of commerce and industry, narrows the job field considerably.

From a personal point of view, and from experience with cases brought to the attention of APEA, it has been found that the greatest impact of this kind of curtailment has been on women. This seems to be from the simple fact that the expectation seems to be that women should or will step aside for their spouse.

It has been observed by the Association that promotions generally go to the male which in turn places them in conflict with their spouse's position. When this occurs the woman is generally transferred to a non-conflict situation although she may be giving up seniority in her work unit, work well known and personally satisfying, or in more extreme measures, forced to transfer agencies, take or request demotions, or leave the State service.

For the reasons stated, APEA must object to any changes in the current statute.

CS: DSL/p

SB 193 (cont'd)

New Section states that an employee may be dismissed, etc. by delivery of written notice of the proposed action and the reason for it from the appointing authority. Employee begins an appeal by filing a written request for review of the action with the Personnel Board within 15 days of receiving written notice (currently employee must request appeal within 15 days of dismissal demotion, or suspension).

Sec. 17 adds new section to 39.25 which allows the use of subpoenas to compel the testimony of witnesses at hearings before the Personnel Board under 39.25.170.

Sec. 18 adds to 39.25 a new section containing definitions of fraud, knowingly, precinct, and state employee.

Sec. 19 adds new section to 39.25 entitled "Employee Political Rights." Allows a state employee to (1) be a member of a political party; (2) take part in a political campaign; (3) express political opinions; (4) register party preference; (5) serve as a voting or nonvoting delegate to a party convention; (6) be appointed, nominated, or elected to nonpartisan public office in a local government unit; and (7) make contributions to a political party or candidate for public office.

Sec. 20 repeals as 29.35.180, "Status of Present Employees" which is labeled "Obsolete" in updated version of statutes.

Provides Act effective July 1, 1981.

Introduced February 20 and referred to State Affairs and Judiciary.

Nepotism  
in State  
Employment

SENATE BILL NO. 194, by the Rules Committee by request of the Legislative Council (for the Blue Ribbon Commission on the State Personnel Act). Repeals and re-enacts current section relating to nepotism, AS 39.10.010. Existing section states that it is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a state department or agency to be employed in that department or agency. New section expands on this prohibition, specifying that it applies to departments and agencies in the legislative, judicial, and executive branches & extending it to relatives of Deputy and Assistant Commissioners, and to executive heads of agencies.

Adds subsection which prohibits a person from being appointed to a position in a division of a state department or agency, in any branch of government, if person is related to executive head of the division.

Adds a third subsection which prohibits a person from being appointed to a position in a state department or agency in the executive branch if person is related to an employee in the department or agency "unless the director of personnel and the person who makes the appointment approve the appointment in writing." This is the only case where exceptions may be allowed.

INTRODUCTION OF BILLS (Senate)(cont'd)

SB 194 (cont'd)

Provides Act effective immediately.

Introduced February 20 and referred to State Affairs and Judiciary.

Retirement  
Benefits  
(limiting  
adjustments)

SENATE BILL NO. 195, by the Rules Committee by request of the Legislative Council (for the Blue Ribbon Commission on the State Personnel Act). Adds new subsections to AS 14.25.173 (Adjustment of Teachers' Retirement Benefits) and AS 39.35.520 (Adjustment of Public Emp. Retirement Benefits) which state that an adjustment which requires repayment of benefits may not be made under the section if (1) the incorrect benefit was first paid two years or more before the member or teacher or beneficiary (employee or beneficiary) was notified of the change or error; (2) the change or error was not caused by the member or teacher or beneficiary (employee or beneficiary); and (3) in the case of Public Employees' Retirement System, the change or error relates to the employee's credited service with the state and not with another participating employer. Act is retroactive to July 1, 1979. Effective immediately.

Introduced February 20 and referred to State Affairs and Finance.

Public Emp.  
Retirement  
Board  
(membership)

SENATE BILL NO. 196, by the Rules Committee by request of the Legislative Council (for the Blue Ribbon Commission on the State Personnel Act). Changes the membership on the Public Employees' Retirement Board (AS 39.35.030). Currently, of the five members, three shall be members of the Personnel Board in the Dept. of Administration and the remaining two shall be members of the Public Employees' Retirement System, elected by members of the system. Bill changes composition of board so that one member is appointed by the Governor and the remaining four are members of the system, elected by the members of the system. Also adds a requirement that at least one of the elected board members be retired. Sec. 2 of bill states that a person serving on the Board on the effective date of Act who was from the Personnel Board of the Dept. of Admin. shall continue to serve until his successor is elected or appointed by the Governor. Does not provide for effective date.

Introduced February 20 and referred to State Affairs.

Regulations  
(adoption of  
by retire-  
ment systems)

SENATE BILL NO. 197, by the Rules Committee by request of the Legislative Council (for the Blue Ribbon Commission on the State Personnel Act). Amends law so that regulations adopted by the state retirement systems are subject to the provisions of the Administrative Procedure Act. Currently sections is AS 39.35 and AS 14.25 relating to the adoption of regulations by the systems state that the regulations relate to the internal management of state agencies and their adoption is not subject to the Admin. Procedure Act. (Bill repeals and re-enacts 39.35.042 and 14.25.022.) Does not provide for effective date. Introd. 2/20, ref. to State Affairs & Judiciary.

Fed. Mgmt.  
Areas  
(citizens'  
adv. comm.)

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 26, (see p. 16). Makes following changes to original bill: establishes the commission as a temporary advisory agency "of the executive branch" of the state and states that commission shall consider the views of



JUNEAU, ALASKA

# Alaska State Legislature

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

Senator Bill Ray  
Chairman

## MEMORANDUM

April 20, 1981

TO: Senate State Affairs Committee

FROM: Teresa B. Cramer *TBC*  
Administrative Assistant

SUBJECT: SB 194: Relating to Nepotism in State Employment

The present statute prohibiting nepotism in state employment is directed at relatives of the executive head of a department or agency. It prohibits the employment of anyone related within the second degree of kindred to the executive head. However, the Personnel Rules also prohibit the employment of persons related within the second degree of kindred to the head of the division or subdivision within which the person is working. (PR 13 09.2). In addition, the Rule requires that before a person may be employed in the same agency with a close relative, that the Director of Personnel and the appointing authority for the department or agency must give express approval to the appointment. (PR 13 09.3)

The scope of the Personnel Rules is broader than the scope of the statute. The Attorney General has advised the Division of Personnel that the Rules are therefore not completely enforceable. The Blue Ribbon Commission considered the issue and the majority recommends that the scope of the statute be enlarged to include the provisions of the Personnel Rules. While provisions against nepotism limit the opportunities of some Alaskans to find employment with particular offices in the state, the disadvantage to those people should be weighed against the appearance of impropriety and favoritism which is created if relatives of the head of a division or department are working within that division or department.

The Director of Personnel advised the commission that in the past he has routinely approved waivers for relatives to work in a non-supervisory status in the same office. The majority of the commission recommends that requirement for review of these situations be placed in

the statute to provide a mechanism for review should an instance of abuse arise.

SECTION B: SECTION ANALYSIS

Section 1. Subsection (a) prohibits the employment of a person related to the top-level managers of a department or agency. It encompasses the present substance of AS 39.10.010 and extends it to include deputy and assistant commissioners.

Subsections (b) and (c) extend the scope of the statute to include the provisions of the Personnel Rule. Subsection (b) prohibits the employment within a particular division of persons related to the division director. It applies to all three branches of government.

Subsection (c) provides that before two close relatives may work in the same office in the executive branch of government, the Director of Personnel and the person who is making the hiring decision must both approve the appointment in writing.

Section 2. Because the state is operating without an effective nepotism law, the commission recommends that the bill take effect immediately.

TBC:lmk  
Attachment

## PERSONNEL RULES

### 13 09.0 Nepotism

13 09.1 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the appointing authority of the agency.

13 09.2 No person may be employed in a position in any division or subdivision of any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the head of the division or subdivision of the agency.

13 09.3 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to any other employee in the agency without the expressed approval of the appointing authority and the Director.

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MSG 81-00007338 PRTY 1 03/09/81 11:15:04 ORIG: LA00 IN= 0006 OUT= 0027  
FROM: MARCIE, ANC TO: BEV, JUNEAU INFO  
TARGET: LJH2;SUBJ: POM'S PAGE 0004

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TO: ALL MEMBERS, SENATE STATE AFFAIRS COMMITTEE

FROM: CATHERINE J. LARSON, SR BOX 2096 R, ANCHORAGE 99507  
PRESIDENT, AK STATE RETIRED TEACHER'S ASSOCIATION

THE ALASKA STATE TEACHER'S RETIREMENT ASSOCIATION SUPPORTS  
SB 195 AS A FAIR AND EQUITABLE WAY TO DEAL WITH ADJUSTMENTS OF RETIREMENT  
BENEFITS.

REPORT OF THE  
BLUE RIBBON COMMISSION ON THE  
**STATE PERSONNEL ACT**  
TO THE  
TWELFTH ALASKA STATE LEGISLATURE  
FIRST SESSION

Senator Bill Ray  
Chairman

February, 1981

SB 195

SENATE BILL 195: LIMITING THE ADJUSTMENT OF RETIREMENT  
BENEFITS.

PURPOSE

This bill remedies a problem which the commission was advised of in testimony from a retired state employee. When the employee retired in 1976, she had been advised on four separate occasions by the staff of the Division of Retirement and Benefits that she was eligible for more than nine years of credited service with the state. Shortly after she retired the legislature amended the retirement laws and she was told that she would receive credit for an additional three years because of her military service. She began receiving retirement benefits on that basis.

In 1979 the division wrote to advise her that their original computations had been in error and that her years of employment with the University of Alaska could not be included in her credited service. Therefore, she had received over \$5000 in benefits which she would have to repay. They reduced the amount of her check by \$100 to be credited towards that overpayment, in addition to reducing the check to the amount she was actually entitled to receive. The basis for denying credit for the employee's period of service with the University of Alaska was a regulation adopted by the Division of Retirement and Benefits in 1978 -- two years after she had retired.

The employee appealed to the Public Employee Retirement Board, which can waive collection of overpayments in cases of hardship. In