ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1687 SJ SB 181 - SB 193

4. AS 47.23.100 should be amended to eliminate the requirement to assess fees for child support services.

After our public hearings were concluded, we received several inquiries from individuals who were unable to come and testify either; (1) due to the extreme weather during the week of the hearings; (2) because the hearings were held during working hours and they could not get away from work in order to provide their testimony; or (3) because the majority of the obligees were not aware that the fee schedule was being considered. As a result of these inquiries, additional hearings are scheduled for March 2, 3, 4, 1981. These hearings will be conducted at 7:00 p.m. rather than 1:00 p.m., which will allow the working parents to attend. Also, all obligees who are currently receiving payments will be notified of the hearings to enable them to attend and express their concerns. The proposed effective date of the regulation has been extended to April 15, 1981.

Upon conclusion of this next group of hearings, careful consideration will be given to all the input we have received and a determination will be made as to whether to proceed with charging fees, and if so, who should pay the fees and how much should be charged.

Sincerely,

Thomas K. Williams
Commissioner

cc: Senator Don Bennett
Co-Chairman Senate Finance Committee

Senator M. E. Dankworth
Co-Chairman Senate Finance Committee

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill 181
Title An Act relating to the enforcement of Child Support
Requested by Senate Health, Education & Social Services Date March 18, 1981

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Revenue Collection and Management
BRU, Program, or Subprogram(s) Affected Audit Division
(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) NONE

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars) NONE

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

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

See the attached memorandum to R. D. Stevenson dated March 17, 1981.

IV. DATE March 18, 1981 PREPARED BY Gary L. Jenkins
AGENCY Audit Division
PHONE 465-2320

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

33-001 (Rev. 12/79)

MEMORANDUM State of Alaska

TO: Robert D. Stevenson
Legislative Assistant

DATE: March 17, 1981

FILE NO:

TELEPHONE NO: 465-2320

FROM: Gary L. Jenkins
Director, Audit Division

SUBJECT: Analysis of
Senate Bill 181

Senate Bill 181 is apparently based on an early draft for proposed legislative changes prepared by CSEA during the summer of 1980. There was considerable concern that the proposed language was not as clear as it could be and that it included civil procedure rules changes. After very careful review by the Department of Law and the staff of the Child Support Enforcement Agency, a final draft was prepared which was introduced by the Governor as House Bill 167. The final language generally accomplishes the same things, does not require any changes in civil procedure rules and gives a clearer picture of the processes which it will change.

The language in SB 181 could cause a person to believe that because a change in the consumer price index of 20% is prima facie evidence of a change in circumstances and it would result in an automatic modification of a support order. The language in HB 167 makes it clear that the consumer price index change can be used as one source of information in the modification process.

The current language in AS 47.23.100 mandates the agency to adopt regulations to charge the custodial parent who has the ability to pay such fees, a reasonable fee for collecting child support payments. At the public hearings regarding these regulations, the public unanimously requested this mandate be eliminated. As no fees have been collected to date, there would be no fiscal impact on eliminating the requirement to assess these fees. Although the agency does not anticipate charging a fee at any time in the foreseeable future, it is recommended that the law retain maintaining the discretion to charge reasonable fees, if needed, to those individuals with the ability to pay such fees. This discretion would be critical if the federal government changed its position with regard to the 75% funding or a mandatory requirement for fees.

SB 181 will make an order to withhold and deliver more efficient by requiring less repetitive paperwork. This new section will allow a third party to continue holding fifty percent of wages or earnings as it becomes due to the delinquent obligor, until the total arrearages stated in the notice of the delinquent obligor's liability has been

satisfied. Prior to issuing a withhold and deliver attachment, the obligor is formally notified of the delinquency and is given thirty days to make arrangements with the agency to satisfy the delinquency. The agency and the third party will only have to serve and receive the order to withhold and deliver once in those cases where the obligor has not made payments as required by court order.

SB 181 will also allow the agency to attach any tax refunds or any other distributions made by the state to delinquent obligors, up to the amount of arrearage stated in the order to withhold and deliver. Section 15 of House Bill 167 accomplishes the same thing, but with more direct language, which clearly explains the entire process. Several terms are also defined in House Bill 167 which further explain the working process of withhold and deliver attachments.

League of Women Voters of Alaska

8926 Birch Lane
Juneau, AK 99801
May 14, 1981

The Honorable Patrick M. Rodey, Chairman
Senate Judiciary Committee
Alaska Legislature
Pouch V, State Capitol
Juneau, AK 99811

Re: SB 181: Child Support Enforcement

Dear Senator Rodey and Committee Members:

The League of Women Voters of Alaska supports enactment, hopefully this session, of legislation to improve the effectiveness of the child support enforcement system in Alaska.

Senate Bill 181 contains many of the needed improvements, and we take this opportunity to thank Senators Rodey and Ray for their sponsorship of SB 181. We think, however, that several significant amendments to the bill might be considered and that the Committee should invite testimony by Ms. Christine Johnson, author of the House Research Agency Report 80-7, "Child Support Enforcement: Alaska's Program in Perspective." Ms. Johnson, as a result of her study, has several specific ideas (which are not in her report, as it was intended to be strictly factual rather than remedial), on how to streamline the paperwork and improve the system markedly.

The statistics on arrearages, under existing court orders that are not being complied with by absent parents, show that <u>much</u> improvement in the present system is needed. Behind these dry statistics lie human suffering by all those children who must endure substandard housing, limited medical and dental care and an overstressed home life because of the irresponsible evasions of the absent parent.

Some specific measures your Committee might consider include: (1) automatic reduction of arrears to judgment (this is routine in many states); (2) court ratification of administrative orders; (3) provisions allowing for voluntary wage withholding at the obligor's option; (4) provisions for entry of an income assignment order, triggered by a specified arrearage (e.g., 30 or 60 days) coupled with a request

by the obligee and opportunity for hearing; (5) a "child support revolving fund" by which State monies could be temporarily used to make the current payments an obligor is failing to make, and the resulting debt of the obligor would be to the State. Anyone drafting text to implement items (4) and (5) might wish to refer to CS HB 167 (HESS).

Finally, we think the State should not be charging for the CSEA's services. The CSEA should be prohibited from (rather than required or allowed to) charge fees to the obligee (custodial parent) and thus, indirectly, to the children to whom the absent parent owes the duty of (shared) support. In a state as relatively well off financially as Alaska, it would be a sad commentary on our priorities if we could not allocate the funds necessary to enforce the duty of parental support, just as we enforce other laws which are high on Alaskans' list of priorities.

The Child Support Enforcement Agency (CSEA) could also be directed (by a statement in the legislative history) to make more aggressive use of the powers already available (see e.g., Alaska's criminal nonsupport statute and compare Michigan's program, p. 77 of C. Johnson report).

Our support for a more effective child support enforcement system is based on a position of the League of Women Voters of the United States (to which we subscribe) which advocates supportive services (specifically including legal services) for women and children, and particularly those with marginal earnings. Most obligees and their dependent children are in that situation.

Sincerely,

for Elizabeth Landa

Margaret E. Holland
Action Chair
League of Women Voters of Alaska

SUGGESTED WAGE ASSIGNMENT LANGUAGE

Section ___. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.132. INCOME ASSIGNMENT ORDER FOR CHILD SUPPORT.

(a) A judgment, court order, or order of the child support enforcement agency (AS 47.23) providing for the support of a minor child shall contain an income assignment order.

(b) An income assignment order shall direct the obligor, his employer, future employer, and any person, political subdivision or department of the state to assign money due or to be due the obligor to the child support enforcement agency (AS 47.23) in an amount sufficient to meet the support payments imposed by the court.

(c) The income assignment shall not take effect, unless ordered by the court at the time of its entry, until the obligor fails to make support payments. The obligee may make an application to the public agency designated to collect child support for the purpose of enforcing the income assignment. Such application shall include a sworn statement that the obligor has failed to make a support payment in full within 30 days of the date payment is due.

(d) At the time of receipt of an application for enforcement of the income assignment, or, where the agency is already acting for the obligee, at the time agency records show the obligor has failed to make a support payment in full within 30 days of the date payment is due, the agency shall send notice of intent to enforce the income assignment to the last address of the obligor by certified mail. The notice shall be postmarked no later than 10 days after the date on which the application was filed and shall inform the obligor that the income assignment will take effect 15 days after the date on which the notice was sent. The notice shall also state that the obligor may request a a hearing within the 15 days after the notice was sent. If the obligor requests a hearing, an income assignment may not take effect until the

conclusion of the hearing. The agency shall schedule a requested hearing with the court within 15 days after the date the obligor requests the hearing.

(e) If the obligor does not request a hearing, or following an order of the court authorizing the use of the income assignment, the agency shall immediately send a copy of the income assignment order by certified mail to persons identified by the obligee, the obligor or the agency as owing money to the obligor. An income assignment made under this section is binding upon a person, employer, political subdivision, or department of the state immediately upon receipt of a copy of the assignment from the court.

(f) An employer may not discharge an obligor on the basis of an assignment under this section.

(g) An income assignment under this section has priority over all other attachments, executions, garnishments, or other assignments unless otherwise ordered by the court. An income assignment is not limited to the wages of an obligor but may include all money owed to the obligor. The exemptions from execution by judgment debtors under AS 09.35.080(a) and the restrictions from execution by judgment debtors under AS 09.35.080(b)(1) do not apply to income assignments under this section.

(h) An obligor, if not the prevailing party, shall pay all court costs involving an income assignment proceeding under this section.

Section ___. AS 47.23.140 is amended by adding a new subsection to read:

(c) A decision of the agency determining a duty of support shall include an income assignment order as provided under AS 09.65.132.

Section ___. AS 47.23 is amended by adding new sections to read:

Section 47.23.2.3. INCOME ASSIGNMENT ORDERS.

(a) The agency shall pay the obligee all money recovered by

the agency under an income assignment order except for costs which are recovered from the obligor or amounts withheld under AS 47.23.255(c).

(b) Notwithstanding AS 47.23.250, an income assignment order contained in a decision of the agency which has not been set aside by the superior court under AS 47.23.220 shall be enforced under the procedure established in AS 09.65.132.

Section ___. AS 47.23.260 is amended to read:

Section 47.23.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH AN ORDER OR LIEN. If any person, political subdivision, or department of the state (1) fails to make answer to an order to withhold and deliver within the time prescribed in AS 47.23.250; (2) fails or refuses to deliver property in accordance with an order issued under AS 47.23.250; (3) pays over, releases, sells, transfers, or conveys real property subject to a lien filed under AS 47.23.230 to or for the benefit of the obligor or any other person; (4) fails or refuses to honor an assignment of wages or income presented by the agency, the person, political subdivision, or department of the state is liable to the agency in an amount equal to 100 per cent of the amount constituting the basis of the lien, order to withhold and deliver, attachment, or assignment of wages or income, together with costs, interest, and reasonable attorney fees.

SUGGESTED RESOLUTION FOR VISITATION PROBLEMS

Section_____. AS 47.23.080(c) is amended.

47.23.080(c). The determination of enforcement of a duty of support is unaffected by any interference by the custodian of the child with rights of custody or visitation granted by a court. However, the court may direct the agency to release the name and address of the custodian of the child upon the request of an obligor and for good cause shown and after affording the custodian an opportunity to oppose the obligor's request.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

STATE OFFICE BUILDING / POUCH SA – JUNEAU 99811

CHILD SUPPORT ENFORCEMENT
AGENCY
201 E 9th Avenue, Suite 202
Anchorage, Alaska 99501

April 30, 1981

The Honorable Patrick Rodey
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Rodey:

During the Senate HESS hearings regarding child support and SB 181, requests were made for language to facilitate an automatic income assignment and a way to resolve some of the obligor's visitation problems.

The attached drafts are the agency's suggestions to deal with these issues. Both drafts were prepared by attorneys within the Attorney General's Office (Pat Kennedy and Bruce Botelho) who work child support cases daily.

If you may have any questions, please do let me know.

Sincerely yours,

Dan R Copeland

Dan R. Copeland
Director

Enclosures

DRC:cb

04-D4LH

of ALASKA
DEPARTMENT OF REVENUE
CHILD SUPPORT ENFORCEMENT DIVISION

MEMORANDUM

TO: The File

DATE: April 30, 1981

FILE NO:

TELEPHONE NO:

FROM: Dan R Copeland
Director
CSED

SUBJECT: CS - HB 167
Fiscal Note

AS 47.23.100

Section 3

The current language in AS 47.23.100 mandates the agency to adopt regulations to charge reasonable fees for collecting child support payments on behalf of single parents who have the ability to pay such fees. At the public hearings required to adopt these regulations, the public unanimously requested this mandate be eliminated. As no fees have been collected to date, there would be no fiscal impact on eliminating the requirement to assess these fees. Although the agency does not anticipate charging a fee at any time in the foreseeable future, the agency does support maintaining the discretion to charge reasonable fees, if needed, to those individuals with the ability to pay such fees. This discretion would be critical in allowing the agency some latitude if the federal government changed its position with regard to the 75% funding or a mandatory requirement for fees.

The federal government has included in its current budget proposals, a mandatory 10% fee charged to the custodial parents for handling the non-AFDC caseload. The adoption of the language in CSHB 167 which states clearly that fees are not allowed, could result in one of two problems. The State could have a federal regulations compliance problem or an additional funding requirement. A full compliance problem is not expected, but if it does happen, it could result in up to a 22 million dollar loss in federal funding for the child support and public assistance programs. An additional funding requirement could mean a loss of approximately 2.0 million in federal funding for the child support program or a requirement to cover the 10% fee estimated at $850,000.

AS 47.23.257

Section 8.

The temporary payment section will have fiscal impact in two ways.

The first and most tangible is in the area where payments would be made to the obligee and subsequent collection from the obligor proves to be unsuccessful. During FY 82 the agency estimates that statewide there will be approximately 5000 family separations and about 2000 of these will include child support requirements. In addition to this, each year approximately 500 of the agency's non-AFDC cases could be expected to request this type of temporary payment. Of the 2500 potential cases a 50% collection rate may be expected.

Under these assumptions, the state would make payments on 1250 cases for three months. An average monthly payment is 165.00 which would set FY 82 fiscal requirement at $618,750.

The second area where fiscal impact would be expected would be in the obligor's attitude that the state will now pay for their child support. This attitude is very common in the AFDC caseload and is one of the contributing factors in making the AFDC successful collection percentage about one half of the non AFDC caseload. The fiscal impact has not been determined at this point.

AS 47.23.275

Section 10

This section dealing with providing information to the obligor as to the location of the children does not have direct fiscal impact. It does have the potential for putting the program in a position where it would not be in compliance with the code of federal regulations. The State of Washington has a similar information release statute and did receive a 5% dissallowance on their AFDC public assistance funds.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

May 4, 1981

The Honorable Fred E. Brown
Chairman
House Judiciary Committee
Room 124 - Capitol Building
Juneau, Alaska

Dear Mr. Brown:

Re: CS for House Bill No. 167 (HESS)

CS for House Bill No. 167 (HESS), an Act relating to child support; and changing Rule 77 of the Alaska Rules of Civil Procedure, was referred in the House on April 20, 1981 by the House Health, Education and Social Services Committee to the House Judiciary Committee.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a Fiscal Note prepared by Mr. Dan R. Copeland, Director, Child Support Enforcement, Department of Revenue, Anchorage concerning the proposed legislation.

Sincerely,

R. D. Stevenson

R. D. Stevenson
Special Assistant

RDS/rdh

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Dan R. Copeland, Director
Chaild Support Enforcement
Department of Revenue

04-D2LH

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS - HB 167

Title An act relating to child support and changing rule 77 of AK rules and Civil Procedu

Requested by House Health Education & Social Service Committee Date 4/29/81

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected Revenue Collection & Management

BRU, Program, or Subprogram(s) Affected Child Support Enforcement Division

(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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.	0	618,750	680,625	762,300	869,020	1,008,065
		→	10% increase			
TOTAL	0	618,750	680,625	762,300	869,020	1,008,065

FUNDING (Thousands of Dollars)

GENERAL FUND	0	618,750	680,625	762,300	869,020	1,008,065
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

See Attached Memo

IV. DATE _____ PREPARED BY Dan R Copeland DR Copeland

AGENCY Child Support Enforcement

PHONE 465-2300 Juneau

272-8651 Anchorage

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/80)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811

January 23, 1981

The Honorable Jalmer Kerttulla
President, Alaska State Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Subject: Status of Child Support Agency Fee Development

Dear Mr. Kertulla:

Since 1975 the Federal Government has provided 75% of the funds to operate each state's child support enforcement program. This federal funding was unlimited as long as the state provided the matching 25% and all program activities were directly related to child support enforcement. The funding covered both the Aid to Families with Dependent Children (AFDC) and non-AFDC child support cases. However, on March 31, 1980 the federal funding for the non-AFDC caseload terminated and reinstatement of this funding did not appear possible in FY 82.

When this problem was brought to the attention of the legislature by the department and concerned obligees, immediate action was taken. The Budget Free Conference Committee added $300,900 to the Child Support Enforcement Agency (CSEA) FY 82 budget to specifically fund staff to handle the non-AFDC caseload. The committee also added the following intent language to the budget:

> "The Department of Revenue will establish a slidin. scale collection fee schedule for the non-AFDC caseload based upon an individual's economic ability to pay. The amount of the General Fund appropriation is to be reduced by the amount of those non-AFDC case collection fee receipts."

In June of 1980, Congress unexpectedly passed legislation which reinstated the federal funding for the non-AFDC caseload. As a result of this legislation, all of the additional $300,900 will be returned to the General Fund at the end of the fiscal year. In my letter of October 13, 1980 to each member of the legislature, the funding situation was explained in detail.

Even though all the additional funds provided will be returned to the General Fund, the Department has proceeded to implement the intent language. In reviewing the intent language the question is raised as to which party, the obligor, as the absent parent, or the obligee, as the child's custodial parent, should pay the fees. The Alaska Statutes address this issue directly by stating that the obligee may be assessed a fee. AS 47.23.100 states in part:

> "If the agency determines that the obligee is financially able to pay, costs shall be assessed according to regulations adopted by the department."

Consideration has also been given to charging fees to the obligor. In this regard, our initial review indicated clearly that charging the obligor a fee, in most cases, would simply deprive the children of some part of those funds which are currently being collected because of the detrimental effect the fee had on overall collections.

Based on their experiences prior to the creation of the Child Support Enforcement Agency, the Alaska Court System has advised against charging the obligor a fee for services. The Court system dealt with charging the obligor for a number of years. Initially they did not provide for a charge, this was followed by a change to charging the obligor and then they changed back to not charging either party. Prior to March 1, 1965, a 3% collection fee was deducted from the money sent to the obligee on cases where the State of Alaska provided reciprocal action. After that, from March 1, 1965 to June 30, 1974 a 3% collection fee was added to the required payment from the obligor. On July 1, 1974 the courts abolished all fees to either party. The fees were dropped for the following reasons:

1. The 3% level was too low to make the fee administratively effective.

2. Collecting the fee from the obligor had a strong tendency to discourage payment altogether.

3. Collecting the fee from either party had a tendency to encourage people to not use the system at first. In most cases the people returned to the system because of subsequent collection problems. The cases were then far more difficult to handle and required substantial work to collect all of the information for the periods the system was not used.

4. In view of the generally high payment delinquency, it was determined that all money collected should be used to provide the needed support of the children.

As an additional preparatory step in establishing a sliding scale fee schedule, in July 1980 the agency completed a study of the thirty states in the nation which charge a fee of any type for child support services. The two main conclusions which resulted from doing this study are as follows:

1. When a fee is collected in sufficient amount to have any significant financial impact on the agency, the fee acts as a deterrent to the non-AFDC client seeking services.

2. When the ability to pay determinations are made with a formal screening process, that process itself takes substantial effort. For example, the necessity to update the ability to pay determination periodically throughout the eighteen year emancipation period would be very time consuming.

The directors of each state's child support program hold an annual meeting to discuss national legislation and exchange views on various issues such as Alaska's fee program. In the September 1980 meeting, the two conclusions developed in the Fee study and the court system's experiences were analyzed further. The other directors concurred with the conclusions we had reached.

Proposed regulations as required by AS 47.23.100 were then prepared for public hearing. The regulations were drafted to make administration of the program as simple as possible. However, the requirement to initially determine and periodically review the obligees ability to pay the fee will require four full time positions. These positions would either have to come from our present enforcement staff or would need to be authorized as additional positions if the current staff assignments are to remain unchanged. The fee program is projected to collect $321,600 annually and the direct personnel cost will be $102,330 annually. It is impossible to measure the effect of the reduction in collection effort if the four positions were taken from current staff.

Public hearings on the proposed regulations were conducted in December, 1980, in Anchorage, Fairbanks, Juneau and teleconferenced to Sitka. Comments were received from obligors, obligees, interested individuals and organizations. The following organizations provided both written and oral comment; Alaska Legal Services, Aiding Women from Abuse and Rape Emergencies, Advocates for Child Support, Alaska Commission of the Status of Women, Women in Crisis, Coalition.

for Economic Justice, National Organization for Women, Federally Employed Women, Radical Women's Group, Women's Resource Center, Valley Women's Group, Fairbanks Child Protection Task Force, and the Alaska Court System.

All of the testimony either generally opposed the imposition of a fee on either party or made salient points about the operation or funding of the agency. In the operational area it was pointed out that the agency should not attempt to replace the Courts in deciding ability to pay, parental responsibility, or the amount of money due from the obligor. It was also stated that when the obligee approaches the agency, they are not requesting a service, but are filing a complaint of noncompliance with an established court order. With regard to the general funding of the agency several people pointed out that the state is only required to fund 25% of the agency's costs and these costs to the state were reduced even further by one half of the AFDC collections. The apparent abundance in the state Treasury and the state's limited funding requirement made most people suggest a change in the law to delete the imposition of fees on either party.

In regard to the issue of funding, it should be noted that the state's 25% funding requirement for the CSEA FY 82 budget is $655,300 of General Fund matching funds. The projection for the collection of AFDC by the agency for FY 82 is $1,250,000. This will return $625,000 directly to the General Fund. In addition to this, our projection is that we will collect $75,000 in program receipts which all go into the General Fund. Thus, at this level of collection, even without the fee program, CSEA will actually produce receipts in excess of the state's appropriation and will return to the General Fund in FY 82 $44,700 more than the amount required to operate the program.

In conclusion, the primary testimony from all parties was in opposition to the fee program. The following were the main points of objection:

1. The terminated federal funding which created the agency's financial need for the fee program has been reinstated.

2. Administrating a fee schedule will either take people away from the current enforcement effort and thereby reduce the current collection potential or will require additional staff.

3. All money collected should be used for the child, not to pay the state which is already receiving more funds from the collection efforts than the general fund appropriation.

4. AS 47.23.100 should be amended to eliminate the requirement to assess fees for child support services.

After our public hearings were concluded, we received several inquiries from individuals who were unable to come and testify either; (1) due to the extreme weather during the week of the hearings; (2) because the hearings were held during working hours and they could not get away from work in order to provide their testimony; or (3) because the majority of the obligees were not aware that the fee schedule was being considered. As a result of these inquiries, additional hearings are scheduled for March 2, 3, 4, 1981. These hearings will be conducted at 7:00 p.m. rather than 1:00 p.m., which will allow the working parents to attend. Also, all obligees who are currently receiving payments will be notified of the hearings to enable them to attend and express their concerns. The proposed effective date of the regulation has been extended to April 15, 1981.

Upon conclusion of this next group of hearings, careful consideration will be given to all the input we have received and a determination will be made as to whether to proceed with charging fees, and if so, who should pay the fees and how much should be charged.

Sincerely,

Thomas K. Williams
Commissioner

cc: Senator Don Bennett
Co-Chairman Senate Finance Committee

Senator M. E. Dankworth
Co-Chairman Senate Finance Committee

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

ON

Senate Bill No. 181

"An Act relating to child support and changing rule 56 of the alaska rules of civil procedure."

Among numerous other changes, this bill would expand the Department of Revenue's authority to adjust child support payment amounts to keep pace with inflation, and to more easily obtain on absent parents' money and property in order to satisfy an obligation to support.

This Department is aware that other states have adopted measures similar to those proposed in this bill, with strikingly effective results. We have no doubt that these changes would increase the effectiveness of Alaska's Child Support Enforcement Agency. From our perspective, improvements would be most noticeable in the following ways:

1. Court-ordered child support payment amounts in our Aid to Families with Dependent Children (AFDC) recipients' cases tend to be inadequate when the court order is new. With the effects of years of increases in living costs, they get more and more inadequate. Even if child support is being collected it is not likely to be in an amount sufficient to enable the children to go off of assistance and live in dignity and independence.

There would undoubtedly be at least two beneficial effects from promoting revision of ordered amounts to keep pace with the actual costs of raising children: (a) single-parent families now able to exist without public assistance payments will be less likely to come on the AFDC rolls if the cost of living would no longer erode the purchasing power of their child support payments; and (b) Those families now receiving AFDC assistance on whose behalf the Agency is collecting child support are more likely to reach a level of child support collections which will eventually exceed the AFDC qualifying income standards. They would therefore leave the AFDC program and be able to live independently.

2. Similarly, the expanded ability of the Child Support Enforcement Agency to establish and adjust child support obligations, with its expanded ability to more easily compel withholding and delivery of the absent parents' earnings, will have positive preventive and corrective effects. Efficiency in these areas help insure that modest-income single parent families will be less likely to need or want financial assistance of all types, including AFDC and Medicaid. Similarily, improving the capability of CSEA to collect substantial child support will be reflected by a decrease in the total amount of public funds paid to recipients, and by an increase in the number of families who are able to leave the assistance rolls.

POSITION PAPER/Department of Health & Social Services

It is our understanding that House Bill No. 167 contains many of the changes proposed in SB No. 181, but that there are some differences between the two bills. We lack the technical expertise to comment on those differences. However, this Department believes passage of either measure would be beneficial to child support enforcement activities and would therefore benefit the AFDC program and its recipients.

Recommended By: Rod Betit

Rod Betit, Director
Division of Public Assistance

Date: 2-28-81

Approved By: Helen D. Beirne

Helen D. Beirne
Commissioner

Date: 2-27-81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 181
Title An Act relating to child support and changing rule 76.
Requested by Ray and Rodey Date 2 27/81

II. FISCAL DETAIL
Agency Affected Health & Social Services
Program Category Affected Social & Economic Assistance for the General Population
BRU, Program, or Subprogram(s) Affected Assistance Payments, AFDC
(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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		0	0	0	0	0
TOTAL		0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

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

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

The Department believes that passage of SB No. 181 may well result in an eventual small reduction in the ra of growth of AFDC expenditures. However, the amount of any such reduction would be contingent upon so many factors that its actual amount cannot be estimated.

IV. DATE 2/27/81 PREPARED BY [signature]
AGENCY [illegible]
PHONE 465 3347

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) M&B Approval [signature] Date 3/3/81

33-001 (Rev. 12/80)

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

ON

House Bill No. 167

"An Act relating to the enforcement of child support"

Among numerous other changes, this bill would expand the Department of Revenue's authority to adjust child support payment amounts to keep pace with inflation, and to more fairly obtain an absent parent's money and property in order to satisfy an obligation to support.

This Department is aware that other states have adopted measures similar to those proposed in this bill, with strikingly effective results. We have no doubt that these changes would increase the effectiveness of Alaska's Child Support Enforcement Agency. From our perspective, improvements would be most noticeable in the following ways:

1. Court-ordered child support payment amounts in our Aid to Families with Dependent Children (AFDC) recipients' cases tend to be inadequate when the court order is new. With the effects of years of increases in living costs, they get more and more inadequate. Even if child support is being collected it is not likely to be in an amount sufficient to enable the children to go off of assistance and live in dignity and independence.

Section 3 of HB No. 167 would undoubtedly have two beneficial effects by promoting revision of ordered amounts to keep pace with the actual costs of raising children: (a) single-parent families now able to exist without public assistance payments will be less likely to come on the AFDC rolls if the cost of living would no longer erode the purchasing power of their child support payments; and (b) Those families now receiving AFDC assistance on whose behalf the Agency is collecting child support are more likely to reach a level of child support collections which will eventually exceed the AFDC qualifying income standards. They would therefore leave the AFDC program and be able to live independently.

2. Similarly, the expanded ability of the Child Support Enforcement Agency to establish and adjust child support obligations, with its expanded ability to more easily compel withholding and delivery of the absent parents' earnings, will have positive preventive and corrective effects. Efficiency in these areas help insure that modest-income single parent families will be less likely to need or want financial assistance of all types, including AFDC and Medicaid. Similarily, improving the capability of CSEA to collect substantial child support will be reflected by a decrease in the total amount of public funds paid to recipients, and by an increase in the number of families who are able to leave the assistance rolls.

POSITION PAPER/Department of Health & Social Services

The Department supports the passage of HB No. 167.

Recommended by: Rod Betit

Rod Betit, Director
Division of Public Assistance

Date: 2-28-81

Approved by: Helen D. Beirne

Helen D. Beirne
Commissioner

Date: 2-25-81

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 167
Title An Act relating to the enforcement of child support
Requested by Rules, by Request Date 2/27/81

II. FISCAL DETAIL
Agency Affected Health & Social Services
Program Category Affected Social & Economic Assistance for the general population
BRU, Program, or Subprogram(s) Affected Assistance payments, AFDC
(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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		0	0	0	0	0
TOTAL		0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

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

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

The Department believes that passage of HB No. 167 may well result in an eventual small reduction in the rate of growth of AFDC expenditures. However, the amount of any such reduction would be contingent upon so many factors that its actual amount cannot be estimated.

IV. DATE 2/27/81 PREPARED BY [signature]
AGENCY [illegible]
PHONE 465-3307

Original: Legislative Finance
cc Budget and Management
Prime Sponsor (First Legislator Named) OMB Approval [signature] Date 3/2/81

33-001 (Rev. 12/80)

TO: Child Support Enforcement Agency

FROM: Sandra Wassilie Sandra Wassilie

DATE: March 3, 1981

SUBJECT: Written Testimony on Proposed Fees for Services

I am against the proposed regulations instituting fees for services provided by the Child Support Enforcement Agency for the following reasons:

1) Enforcement is a legitimate government activity. I do not pay application, service, or processing fees for police enforcement activities. I do, however, pay numerous taxes which contribute to the funding of such activities and have a right to expect child support enforcement activities.

2) Child support contributes to the maintenance and well-being of the children of Alaska. With the present abundance of State monies, services which contribute to the well-being and development of our greatest resource, our children, whould have no funding difficulties. Why harass low income parents with unnecessary fees which will undoubtedly cut into the child support that is received?

3) In many cases, such as mine, child support goes to families of single parents. Single parents face more time and financial constraints than two-parent families. There is only one income and one adult to take care of all the responsibilities. When a single parent with young children pays child care in order to work, his or her income is immediately lower in comparison to a worker in the same pay bracket who is single without children or married with children. Child support enforcement fees on top of child care for single parents who work are an added burden, and the fees would be one more deterrent to those on welfare who want out.

4) The proposed fees are too high. They will deter those of us who are determined capable of paying from using services. I can expect to pay up to $360 in processing fees alone in one year. I would rather invest the money in medical consultations for my hearing impaired son.

The problem would then become a vicious circle. Without the agency acting as a clearinghouse on payments, the impetus to pay support would be removed. There is already a high incidence of delinquency and non-payment in this State; this situation is likely to be increased but unaccounted for without use of the Agency services. With high fees, the parent in custody would be reluctant to begin services if the cost for the return is too great. This is similar to the reason legal action is often not taken.

5) The acts of determining ability to apy and processing fees will require additional personnel or cut into the enforcement activities of existing personnel. This situation contributes to either 1) assessment of fees high enough to support personnel to assess fees, or 2) watering down the effectiveness of the Agency by reducing enforcement services.

6) Determining ability to pay is paternalistic. While the intent behind this practice is to provide a sliding scale of fees equitable with a person's ability to pay, I feel notarized statements of income border on the unethical in this situation. Child support is a right for children and child support enforcement a right of the parent in custody. Income levels should not be a factor nor should fees be assessed at all.

In conclusion, I am against instituting fees because enforcement services are a right of all children and indeed all citizens who have a socio-economic interest to see children brought up under the most desireable conditions society can provide. Further, the State can afford this service and does not need to increase its bureaucracy or to inflict further financial burdens on parents unnecessarily.

SW/dmt
CC: Senator Jay Kertulla
Representative Betty Cato
Representative Sam Cotton, House Finance Committee Chairman
Senate Finance Committee Co-Chairmen
Senator Don Bennett
Senator Ed Dankworth

Sandra Wassilie
Box 1576
Seward, AK 99664

ag

SEWARD, AK 99664
MAR 3
1981

Representative Sam Cotton —
House Finance Committee Chairman
Pouch V
Juneau, AK 99811

this is
Lisa P's
sister
treat with care

February 17, 1981

Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making amendments in the Alaska Child Support Enforcement Act (AS 47.23). The bill would make technical amendments in the law for the purpose of clarification. The bill also would enhance the ability of the Child Support Enforcement Agency to enforce child support obligations in the state.

The bill would allow the agency to seek an order for the payment of child support based upon the non-custodial parent's ability to pay without limitation as to the amount of public assistance provided to the minor child. The difference between the support collected and the amount of the public assistance grant will be paid to the obligee. This change may permit the agency to collect enough support to remove the minor child from the public assistance rolls.

The bill would amend the authority of the agency to administratively order the delivery of earnings of an obligor to make the order effective for as long as a support debt exists. This change will free the agency from the burden of refiling the withhold and deliver order against earnings for each pay day of the obligor.

The bill would also exempt 50 percent of the earnings of an obligor from a withhold and deliver order. Existing law allows the seizure of all of an obligor's earnings to satisfy a support debt. The proposed amendment would protect enough of the earnings of the obligor to provide for that person's subsistence while also providing a contribution to the support obligation.

Sincerely,

S/JSH

Jay S. Hammond
Governor

MEMORANDUM State of Alaska

TO: File

DATE: March 3, 1981

FILE NO:

TELEPHONE NO:

FROM: Dan R. Copeland
Director

SUBJECT: SB/181 "An Act Relating to the Enforcement of Child Support and Changing Rule 56 of the Alaska Rules of Civil Procedure".

This bill makes a number of legal terms clarifications which will help all parties. Other states have adopted measures similiar to those proposed in this bill with great benefit to all parties. From our perspective the changes, clarifications and improvements most noteable would be the following:

1. Child Support payments could be modified through normal judicial means, based upon a change of 20% in the consumer price index.

2. Arrearage from non payment of child support could be reduced to judgement via a simplified process by changing Rule 56 of the Alaska Rules of Civil Procedure.

3. The absolute mandate to charge fees for service provided by the agency would be changed to allow the agency the discretion to charge reasonable fees if needed. Those individuals who could not afford to pay a fee would still receive the services for free.

4. The agency could procede to establish a child support order for an AFDC recipient obligee for the full amount of the obligor's ability to pay rather than limiting the order to the amount of AFDC granted the obligee.

5. The agency could file a child support order obtained through administrative means with the superior court. The normal appeal process would be available, but if appeals were not filed, the court may issue an order confirming the administrative decision.

6. The agency would not be required to re-serve withhold and deliver attachments every thirty days to people who have already been formally notified of the unpaid obligation.

All of the points discussed will aid the agency in its' effort to collect child support. Collection of child support on a regular basis has the direct effect of reducing the possibility that the single parent family will want financial assistance in the form of AFDC and medicaid. No part of this bill requires the obligors to do anything that they have not already promised that they would do in the first place.

MEMORANDUM State of Alaska

TO: File

DATE: March 3, 1981

FILE NO:

TELEPHONE NO:

FROM: Dan R Copeland
Director

SUBJECT: Senate Bill 181

The following is a detailed commentary on SB 181.

Section: 1 AS 09.55.220 The new subsection to be added to AS 09.55.220 will be used in the effort to modify an existing child support order. Allowing the change in consumer price index to be used as prima facie evidence of a change in circumstances will cut the handling time required by the court system and reduce the contact required from both parties. Each side will have a better idea as to when a modification may be requested. The index will be used as one of the burdens of proof but can not be used to require automatic modifications. All child support orders and subsequent modifications are based upon two factors; ability of the obligor to pay and the needs of the child. This change appears to be aimed at automatic modification upon a 20% change in the index. Actually both parties may use the change to support an increase or decrease. Section 3 of HB 167 accomplishes much the same thing without clouding the issue.

Section: 2 AS 25.55.010(1) Adding new language to AS 25.55.010(1) will allow the agency to enter into reciprocal agreements with foreign countries that have a similar Uniform Reciprocal Enforcement of Support Act. This would include such countries as Federal Republic of Germany (West Germany), Great Britain, Canada, and other commonwealth countries. This would allow the agency to obtain child support order when the absent parent is located or resides in a foreign country.

Section: 3 AS 25.25.010(6) Adding new language to AS 25.25.010(6) will provide the obligor in URESA cases with an incentive to make payments on a current basis. The overdue fee will be charged and subsequently collected or reduced to judgment. This additional charge will make the delinquent obligor, who in fact creates the need for the agency, pay for a portion of the agency cost.

Section: 4 AS 25.15.010(11) Adding new language to AS 25.25.010(11) will simply provide an explanation as to what interest means. This amendment should be changed to read "or at the rate established by the Department of Revenue (not the Department of Health and Social Service)

Section: 5 AS 25.25.258 Adding a new sub-section to AS 25.25.258 will allow the agency to register a support order from another state when the obligee is not a resident of Alaska and the obligor is a resident of

Alaska without opening the matter of custody and visitation. This will simplify obtaining an Alaska order by reducing handling; legal processing, and court time when the obligee has already obtained a child support order in another state. Some states do request the State of Alaska to register their orders under the current statute. No problems have been noted to date in this matter of reopening custody or visitation. This statute change would ensure that it stays this way.

Section: 6 AS 47.23.020(2)(A) The additions and deletions to AS 47.23.020(2)(A) will correct the existing language. There will be no change in the meaning of the section, only a clarification in the use of the terms "minor child" and "obligee".

Section: 7 AS 47.23.020(2)(C) Adding new language to AS 47.23.020(C) requires the agency to notify the obligor as to when an overdue or insufficient funds fee is assessed.

Section: 8 AS 47.23.020(b) Adding a new subsection to AS 47.23.020 will clarify when notification is required in section 7 above. Notification in this case requires mailing by first class mail a copy of the appropriate documents to the last known address of the obligor available to the agency. All court orders currently require the obligor to notify the agency of any change in address.

Section: 9 AS 47.23.045 The additions and deletions to AS 47.23.045 corrects the existing title. Currently the title implies that this section deals with the determination of support obligations. The setion actually deals with the agency right to intervene in support obligation cases.

Section: 10 AS 47.23.092 Adding a new section as 47.23.092 will allow the agency to obtain a judgment on court ordered support payments that are past due and unpaid by the obligor. This change will allow the agency to submit a certified statement of such arrearages to the Superior Court, and at the same time notify the obligor of the arrears and the agency's request for judgment. If the obligor does not present a defense, the Superior Court may then reduce the arrearages to judgment and include any overdue charges and interest due. This would simplify the obtaining of judgment by reducing handling, legal processing and court time when the obligor has failed to comply with a court order. This is a change in the Alaska rules of Civil Procedure.

Section: 11 AS 47.23.100 The additions and deletions to AS 23.100 will correct the current language to allow the Department of Revenue the discretion as to whether or not the agency should charge fees. The current language does not allow the department to make this decision. The agency is now required to determine each obligee's ability to pay and then assess costs or fees accordingly. The statute change will allow the agency to charge fees when funding or other requirements dictate it, but will not require the agency to maintain fee regulations unless those regulations are to be utilized.

Section: 12 AS 47.23.110(3) Adding new language to AS 46.23.110(3) will provide the obligor with an incentive to make payments on a current basis. The overdue fee will be charged and subsequently collected or reduced to judgment. This additional charge will make the delinquent obligor, who in fact creates the need for the agency, pay for a portion of the agency cost.

Section: 13 AS 47.23.110(4) The additions and deletions to AS 47.23.110(4) will correct the existing language. There will be no change in the meaning of the section, only a clarification in the use of the terms "minor child" and "custodial parent".

Section: 14 AS 47.23.110(7) Adding new language to AS 47.23.110(7) will simply provide an explanation as to what interest means. This amendment should be changed to read "or at the rate established by the Department of Revenue".

Section: 15 AS 47.23.130 The additions and deletions to AS 47.23.130 will allow the agency to establish child support orders based upon an obligor's full ability to pay rather than limiting the order to the public assistance issued. Making regular collections for orders established based on an obligor's full ability to pay will in some cases take the obligee off of the AFDC roles. Any collections over the assistance granted will be given to the obligee for the care of the child.

Section 7 of HB 167 accomplishes the same thing but with more direct language which clearly explains the entire process.

Section: 16 AS 47.23.150 Adding a new subsection AS 47.23.150(C) will eliminate part of the obligor's option to simply ignore the child support obligation.

Section: 17 AS 47.23.160(b) The additions and deletions to AS 47.23.160(b) will correct the existing language. There will be no change in the meaning of the section, only a clarification in the use of the terms "minor child", "obligee" and "custodian".

Section: 18 AS 47.23.160(c) Adding a new subsection AS 47.23.160(c) will eliminate part of the obligor's option to simply ignore the child support obligation.

Section: 19 AS 47.23.170(e) The additions and deletions to AS 47.23.170(will correct the existing language. There will be no change in the meaning of the section, only a clarification in the use of terms "minor child" and "obligee".

Section 20 AS 47.23.170(f) will correct the existing language. There will be no change in the meaning of the section, only a clarification in the use of terms "finding: and "filing".

Section 21 AS 47.23.182

Adding a new section AS 47.23.182 will allow the agency to file all administratively established child support obligations with the Superior Court. The Superior Court will review the determination and allow the abligor a thirty day appeal period. Upon completion of the review and the appeal period, the Superior Court may issue a court order confirming the entire process and making the order enforceable through either the courts or administrative means. This may be a change in the Alaska Rules of Civil Procedures.

Section 22: AS 47.23.190(a)

The deletions to AS 47.23.190(a) will correct the existing language. There will be no change in the meaning of the section, only a clarification in the use of the terms "obligee" and "custodian".

Section 23: AS 47.23.190(c)

The deletions to AS 47.23.190(c) will correct the existing language. There will be no change in the meaning of the section, only a clarification of the use of the terms "obligee" and "custodian".

Section 24: AS 47.23.250

Rewriting AS 47.23.250 will make an order to withhold and deliver more efficient by requiring less repetitive paperwork. This new section will allow a third party to continue holding fifty percent of wages or earnings as it becomes due to the delinquent obligor, until the total arrearages stated in the notice of the delinquent obligor liability has been satisfied. Prior to issuing a withhold and deliver attachment, the obligor is formally notified of the delinquency and is given thirty days to make arrangements with the agency to satisfy the delinquency. The agency and the third party will only have to serve and receive the order to withhold and deliver once in those cases where the obligor has not made payments as required by court order.

Rewriting the section will also allow the agency to attach any tax refunds or any other distributions made by the state to delinquent obligors, up to the amount of arrearage stated in the order to withhold and deliver. Section 15 of House Bill 167 accomplishes the same thing, but more direct language, which clearly explains the entire process. Several terms are also defined in House Bill 167 which further explain the working process of withhold and deliver attachments.

Section 25: AS 47.23.092

This section simply points out that his act has the effect of changing Civil Procedure rules. This will require a larger majority in each house of the legislature for the act to become a potential law available for the Governor's signature.

MEMORANDUM State of Alaska

TO: File

DATE: March 3, 1981

FILE NO:

TELEPHONE NO:

FROM: Dan Cobeland
Director

SUBJECT: HB 167 vs SB 181 on all points
HB 167 vs HB 175 on the fee issue

The two bills are very similar in nature, both making identical technical changes to clarify legal terms. Each bill then goes on to deal with four common points, with HB 167 providing language which provides a better overall approach and technical applicability.

HB 167 includes a good clarification of an income exemption for the obligor. This point is critical as the obligor's gainfull employment as well as the reasons to stay that way are most important for continued collections.

SB 181 makes four additional changes which are not of great importance to the operation of the agency. The first change requires changing civil procedure rules and the second may require a rule change. This makes final passage into law more difficult. The agency does not feel the changes which can be accomplished by operational shifts are worth the increased difficulty in getting final approval. The third change is to cover a potential problem if the agency starts to have trouble registering foreign orders. The fourth is a title change in a section which is not critical in any way.

The current statute mandates the agency to charge reasonable fees to those that can afford to pay for the services. HB 175 takes the opposite approach and mandates providing the services to everyone regardless of conditions. HB 167 provides the Department of Revenue the discretion to charge fees to those that could afford it, if financial or other requirements mandated it.

My opinion as the State of Alaska, Child Support Director is that HB 167 rather than HB 175 or SB 181 would be of considerable benefit to the State of Alaska.

House Reserved ONLY 30K CHILDREN IN PROGRAMS

FACT SHEET

A substantial portion of the child population of Alaska, at least 30,000 children, are not receiving child support payments from the absent parent. These children are being supported by one parent alone (usually at or near poverty level) or by welfare.

Enforcement of child support orders through private attorneys is impractical for families in this predicament. The State of Alaska is doing little to enforce payments. Alaska, like the other states, has an agency whose charge is to enforce child support payments, and has authority to work through the interstate enforcement arrangements which now exist.

Here are some statistics on the Alaska Child Support Enforcement Agency (CSEA) which is located in the Department of Revenue:

Agency Caseload

Active cases with court orders	7,000
Inactive cases with no support orders	10,000
	9,900
Total	17,000
Caseload per Enforcement Officer	1,800

On the average there are two children per case, so this represents approximately 34,000 children.

The inactive cases with no court orders are mainly families on welfare. CSEA has authority to administratively establish support orders, which it could then begin to enforce.

Insufficient funding has kept the agency from doing so. All families on AFDC (welfare) are required to register their cases with CSEA. For other families registration with the agency is optional. The number of cases not registered with the agency is not known, but is certainly in the thousands. Many parents do not file their cases with the agency because of the agency's poor track record.

REFUTED BY H.R. REPORT

Of the 17,000 cases registered with the agency, 10,000 inactive cases are not being enforced at all. 60% of the 7,000 active cases are overdue 3 months or more. 41% of the 7,000 are overdue 1 year or more.

Arrearages on the 7,000 active cases totaled $27.8 million as of September 31, 1980. The collection rate on the active cases is 30%.

$260,000 COST TO STATE

Agency Budget

Last year Alaska spent $560,000 to support the agency. The Federal Government contributed another $2 million. The State recovered approximately $300,000 of its expenditures. This is because when a family is on welfare the child support collected is retained by the State and Federal Governments to reimburse welfare costs.

NOTE: Some states with effective enforcement agencies therefore net a great deal of money through child support collections.

A small part of the budget goes for actual collection activities for nonwelfare families. When Federal funding for that portion of the program was temporarily terminated in 1979, the Alaska agency, for lack of $260,000, virtually ceased enforcement for nonwelfare families for one year.

Do the families need child support money?

The United States Census Bureau shows that nationally 15.7% of children live with a single parent as the result of a divorce or because parents never married. This statistic may be higher in Alaska because we have one of the highest divorce rates.

Nationally 95% of these children lived with their mothers. Incomes of these families have been shown to drop drastically as the result of divorce.

1975 poverty rate for women who were divorced, separated, never married or remarried (U. S. Census Bureau):

At or below poverty level	*44%*
Up to 125% of poverty level	*34%*
Total	*78%*

The majority of these families received little child support.

For the subgroup that received no child support at all in 1975, 93% were at or just above the poverty level.

At the Fourth Quarter Regional Council Meeting of the CETA Region I Advisory Council held in Juneau on September 5, 1980 the Council discussed various groups in greatest need of CETA services. The group determined "most needy" is the Displaced Homemaker/Single Parent group registering greater need than the handicapped, the veteran, the elderly.

Inflation

Court support orders are typically set at no more than half the cost of raising a child. At current inflation rates the buying power of the set amount can be eroded 50% in four years. An average monthly support order currently registered with the Alaska enforcement agency is $150. This amount covers on the average two children, or less than $100 per month per child. The agency is in fact collecting only 30% of the court ordered amount. Thus less than $25 per month per child, averaged over all "active" cases, is being collected.

Few families get their support orders adjusted upward to compensate for inflation. CSEA has not functioned to do this. Through a private attorney the cost is usually near $2,000.

Legislative Report

At the request of members of the State House of Representatives, the Legislative House Research Agency is preparing a study of child support enforcement in Alaska. This study, which will be available soon, verifies the statistics quoted above. It provides an in-depth analysis of the situation and describes successful programs which some other states have.

Poverty not the only problem

Children who receive no child support often suffer from inadequate parenting as well, despite the best efforts of the custodial parent. The single parent has to work full time. Usually a woman, her earnings are normally low. At the same time this person has to cope with housing problems, with maintenance work on what is probably substandard housing, car repairs, and housekeeping chores.

There are also the hassles of the Alaskan winter to cope with. Little time and energy remain to devote to the children's psychological needs. Taking care of children is a larger job than many recognize. Single parents may do the best they possibly can and still be inadequate. These families can be healthy if they are not so overstressed.

An ongoing study of 18,000 school children (throughout the United States, conducted for Charles F. Kettering Foundation and the National Association of Elementary School Principles) shows that the school drop-out rate of children from single-parent families compared to other children is 9 to 5, while for expulsions, the rate is 8 to 1. School achievement levels are also lower.

December 22, 1980

The Honorable Patrick Rodey
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Rodey:

Enclosed is a copy of proposed legislation drafted by the Child Support Enforcement Agency which, it is our understanding, the Administration intends to introduce. We support this legislation. However, we understand that two sections, Section 47.23.092 Reducing Arrears to Judgement, and Section 47.23.182 Ratification by Court of Administrative Orders, have been deleted. The purpose for the deletion appears to be to make the legislation more palatable to the Legislature.

The Child Support Enforcement Agency and the Office of the Attorney General would be saved both time and money by the inclusion of these two sections and it is, therefore, our feeling that they should be a part of new legislation. Change in the law demanded by Section 47.23.092 is long overdue. Once a payment is missed it should become a debt owed.

The proposed legislation would amend Section 47.23.100 to say that costs may be assessed the obligee according to regulations adopted by the Department, whereas the existing statute makes it mandatory to levy a fee against the obligee (and hence the child). The monetary support due the obligee (custodial parent) is for the care of the child. Therefore, it seems cruel to further penalize the child by assessing a fee against the support legally due the child. The cause of the work of the Child Support Enforcement Agency is the obligor, not the obligee or the child. All concepts of basic justice point toward levying these fees on the delinquent obligor rather than on the obligee (and hence the child).

The proposed legislation does an admirable job for the areas it addresses. It is not enough. Areas of concern to us are outlined below:

Inflationary Adjustment

Divorce decrees make no provision for the monetary support obligation of the non-custodial parent to be increased through the years. What may have been a sufficient amount for a child's support five or ten years ago is totally inadequate today. Court orders presently processed through the Child Support Enforcement Agency average less than $100 per month per child. A statute building in an inflationary (cost of living) adjustment

is necessary at this time. An example might be an increase each year according to the Anchorage C P I. This statutory provision would keep existing support orders from falling beneath the buying power they presently have. However, there must be a method for raising the long outdated support orders to the level of current inflation. This could be done by the Agency under present statutory authority if the Agency were properly funded and directed for this purpose by the Legislature.

Currently custodial parents are prevented from seeking amended support orders through private court action because the cost to them (and hence to the child) is normally several thousand dollars. Further, if all the custodial parents in Alaska who should have their orders raised were to privately go to the court to do so, the courts would be swamped.

Unreliable Support Income

The awesome responsibilities of the single parent are too often greatly increased by the unreliability of receiving child support income. For instance a family on AFDC may receive child support for several months in a row, long enough for them to lose their eligibility for AFDC. Then no child support may be received for months, but there is a time lag in getting back on to the AFDC rolls. During this time the family has had no or greatly reduced income. Children should not be subjected to the terror of knowing there is nothing with which to pay the rent or purchase the essential boots.

Families who do manage to stay off AFDC are often severely affected by the instability of child support income. Families who have entered into contractual agreements to purchase, such as a house or a car, have lost these purchases when child support income has not been paid, as ordered by the Court. Two concepts of dealing with this subject of undependable child support income have thus far been suggested.

A. The State of Alaska would establish a Child Support Payment Pool or Loan Fund. Currently the State of Alaska provides financial assistance to various segments of our State through loan funds to aid historical district restoration, commercial fishing, small businesses, fisheries enhancement, child care facilities, mining, residential care facilities, to name a few. A revolving fund or payment pool to benefit children in single-parent families would be an enlightened step a State, concerned about the welfare of a major portion of its people, could take.

The pool would operate under a revolving loan fund concept. Child Support payments registered through the Child Support Enforcement Agency would be made regularly from the Child

Support Payment Pool/Revolving Fund. The children affected would no longer be subjected to the vagaries of unreliable income. The obligor, or noncustodial parent, would then owe the Child Support Payment Pool/Revolving Fund. A debt against this Pool/Fund, being a debt against the State, would be collected by the State. The State is empowered to zealously pursue and effectively collect its debts.

B. A selfactivating enforcement mechanism such as that used in many of Michigan's counties. All child support orders are registered with the County's Friends of the Court. A child support payment which is late by a determined number of days evokes a computer signal. The Friends of the Court make a telephone call to the obligor. Letters of warning are also sent. The Friends of the Court may begin enforcement procedures as soon as a payment is late. Unlike the Alaska agency, they do not have to wait for the obligee to come to the agency and make a complaint. This procedure combined with Michigan's practice of jailing for nonsupport has made it the most effective state in the nation in collecting child support.

Additionally legislation should be enacted to provide that automatic wage assignments can be made in cases whenever practical. One obligor has stated that this method of meeting his child support obligation is the best for him because it is so "painless," he never sees it. The wage assignment would create a bookkeeping burden for employers. There would have to be a way to provide some type of reimbursement to employers who must bear this added bookkeeping expense. This cost cannot be borne by the child.

Studies show that throughout the nation the amount of child support dollars collected is in direct proportion to the amount of child support agency budget dollars appropriated. The Legislature should increase the Child Support Enforcement Agency budget substantially in order to adequately pursue the task of providing for the needs of a great percentage of Alaska's child population.

We are grateful for your willingness to obtain solutions for these children.

Sincerely,

ADVOCATES FOR CHILD SUPPORT

Judy Brakel

Kathy Jenerson

Enclosures

SB
183

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 18, 1982

SUBJECT: Exemptions from financial disclosure (CSSB 183 (SA))

TO: Senator Vic Fischer
Chairman, Senate State
Affairs Committee

FROM: Richard A. Bradley
Legislative Counsel

The bill is provided as requested. It exempts from the requirement that a public official or candidate report "the name of a person who is a patient or a patient of an entity which is the source of income to him" in the following groups of individuals: those licensed under

AS 08.20 chiropractors;

AS 08.32 dental hygienists;

AS 08.36 dentists;

AS 08.64 physicians;

AS 08.68 nurses;

AS 08.80 pharmacists;

AS 08.84 physical therapists; and

AS 08.86 psychologists and psychological associates.

The bill does not exempt nursing home administrators (AS 08.-70) or dispensing opticians or optometrists (AS 08.71; 08.-72).

You also asked whether a classification exempting the particular professional from disclosure would withstand equal protection scrutiny.

I believe that it would. Note, however, that it is possible that the classification implicit in the bill (members of the healing arts professions) is both overbroad (in its inclusion of "medical" professionals for whom the privilege is unnecessary) and underinclusive (in its omission of members of other professions whose clients might have such claims to privacy: for example lawyers whose practice is limited to divorce or similarly private matters). In that connection, it may be useful to review the language of the case analyzing these questions that reached the Alaska Supreme Court: Falcon v. Alaska Public Offices Com'n, 570 P.2d 469, 479 (Alaska 1977):

> "In particular situations, however, as the state admits, disclosure of the mere fact that an individual has visited a certain physician may have the effect of making public certain confidential or sensitive information.
>
> "According to one commentator:
>
> > "'[s]ensitive information is that which a person desires to keep private and which, if disseminated, would tend to cause substantial concern, anxiety or embarrassment to a reasonable person.'
>
> "As an example, the commentator suggests:
>
> > "'the decision to have an abortion [is one] which many people would be reluctant to discuss even with their closest friends. . . . (footnotes omitted)'
>
> "Where an individual visits a physician who specializes in contraceptive matters or whose primary practice is known to be giving abortions and the fact of a visit or rendering of services becomes public information, private and sensitive information has, in our view, been revealed. Even visits to a general practitioner may cause particular embarrassment or opprobrium where the patient is a married person who seeks treatment without the spouses's knowledge or a minor who does so without parental intelligence. Similar situations would be presented where, because of specialized practice, the disclosure of the patient's

> identity also reveals the nature of the treatment, and the particular type of treatment is one which patients would normally seek to keep private. Some examples would include the patients of a psychiatrist, psychologist or of a physician who specialized in treating sexual problems or venereal disease.
>
> "In these situations, at least, we find that the extent to which the governmental interest in promoting fair and honest government would be impeded, does not outweigh the individual's privacy interest in protecting sensitive personal information from public disclosure. In emphasizing these examples, we reiterate that situations involving specialized practice of psychiatry or venereal disease present the exception rather than the general rule and that, ordinarily, identification as a patient of a general practitioner who also engages in some of these functions does not infringe a significant privacy interest."

The last sentence of the Court's opinion should also be noted:

> In addition, the [Alaska Public Offices] Commission may well wish to promulgate regulations which apply to relationships other than that of physician-patient.

The committee should finally note that the need for the bill is somewhat undercut by the regulations of the commission responsive to the Falcon case. See 2 AAC 50.100, copy enclosed. It provides exemptions in a different framework than that of the bill:

> The names of the following persons should not be disclosed:
>
> (1) a patient of a physician whose primary practice is generally known to be in contraception or abortion;
>
> (2) a patient of a psychiatrist;
>
> (3) a patient of a psychologist;

(4) a patient of a physician whose primary practice is generally known to be in treating sexual problems or venereal disease;

(5) a married client who seeks medical or legal assistance without the spouse's knowledge, if disclosure would likely cause substantial embarrassment or opprobrium;

(6) a minor who seeks medical treatment without parental knowledge, if disclosure would likely cause substantial embarrassment or opprobrium. [2 AAC 50.100(a)]

The different approaches of the regulations and the bill are therefore clear. The regulations seek to protect the patient from disclosure, only in some cases exempting all of the practice of the physician; the bill does not distinguish between the practice of the psychiatrist or physician who performs abortions frequently from the practice of a foot doctor.

The legislature possesses very broad powers of classification. In my view, the classifications presented in the bill are for the reasons suggested arguably both overbroad and underinclusive. Considering the commission's regulations, the existing requirements for disclosure by physicians are undoubtedly constitutional. SB 183 does not, therefore, respond to the mandate of the Supreme Court in the Falcon case. That is not to say that physicians covered by the commission's regulations (who are still required to disclose) are happy with the result.

I do suggest that the classification used may present some theoretical equal protection problems. They may remain theoretical to the extent that those not excluded by the bill may be excluded by the commission's regulation.

If I may assist further, please advise.

RAB:ljb

Enclosures

information and also requires reporting of all required information actually known. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.030(a)

2 AAC 50.040. LOANS AND INDEBTEDNESS. AS 39.50.030(b)(6) includes all loans or indebtedness of $500 or more made or still outstanding during the preceding calendar year. (Eff. 5/16/76, Reg. 58; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 39.50.030(b)(6)

2 AAC 50.050. RETAIL CHARGE ACCOUNTS. For purposes of reporting liabilities under AS 39.50.030(a) and 39.50.030(b)(6), the reporting official is not required to report retail charge accounts, revolving charge accounts or credit card obligations. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.030(a)
AS 39.50.030(b)(6)

2 AAC 50.060. WRITE-IN CANDIDATES. A public statement by an individual not appearing on the ballot that he will seek elective office constitutes a declaration of candidacy under AS 39.50.020. (Eff. 5/16/76, Reg. 58; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 39.50.020

2 AAC 50.070. INCOME. In this chapter and in AS 39.50, "income" includes gross income under Section 61 of the Internal Revenue Code (26 USC § 61) in effect on May 16, 1976. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.030(b)(1)

2 AAC 50.080. CONTROLLING INTEREST IN A CORPORATION. In AS 39.50.200(8), "controlling interest" in a corporation means ownership of more than 50 percent of the outstanding shares of a corporation at any time during the year for which a report is being filed. In this section, the rules of constructive ownership in Section 318 of the Internal Revenue Code (26 USC § 318) in effect on May 16, 1976, will be used to determine ownership of a corporation's shares. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.200

2 AAC 50.090. MUNICIPALITIES AS INSTRUMENTALITIES OF THE STATE. In AS 39.50.200(5), "instrumentality of the state" includes municipalities. (Eff. 5/16/76, Reg. 58)

Authority: AS 15.13.030(10)
AS 39.50.200(5)

2 AAC 50.100. CLAIMING CONSTITUTIONAL OR STATUTORY EXEMPTION FROM THE REPORTING REQUIREMENTS OF AS 39.50.030(b)(1). (a) Disclosure of another person's name in a report is not required and should not be made where that disclosure alone would likely result in disclosing sensitive information which the person would want to keep private and which, if made public, would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person. The names of the following persons should not be disclosed:

(1) a patient of a physician whose primary practice is generally known to be in contraception or abortion;

(2) a patient of a psychiatrist;

(3) a patient of a psychologist;

(4) a patient of a physician whose primary practice is generally known to be in treating sexual problems or venereal disease;

(5) a married client who seeks legal or medical assistance without the spouse's knowledge, if disclosure would likely cause substantial embarrassment or opprobrium;

(6) a minor who seeks medical treatment without parental knowledge, if disclosure would likely cause substantial embarrassment or opprobrium.

(b) A physician, pursuant to (g) of this section, may request an exemption on behalf of any other patient similarly situated where the disclosure of that patient's name would likely result in disclosing information which he would want to keep private and which, if made public,

would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person, to be determined on a case-by-case basis as set forth in (g) of this section.

(c) A patient not exempted in (a) of this section may request, pursuant to (g) of this section, that his physician apply for an exemption on his behalf when disclosure of his name would likely result in disclosing information which he would want to keep private and which, if made public, would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person, to be determined on a case-by-case basis as set forth in (g) of this section.

(d) It is recommended that an individual who is self-employed as described in AS 39.50.200(8), and who acts in such a way as to become subject to the requirements of AS 39.50, and whose business or profession is such that disclosure of the names of his clients or customers may significantly infringe on their constitutional guarantees to right of privacy, apprise those clients or customers not exempted by (a) of this section of his reporting requirements under law and the options available to the parties involved, as set forth in (b), (c), and (g) of this section.

(e) An individual who must submit a report pursuant to AS 39.50, and who is required to list the names of his clients or customers, but who claims an exemption for some or all of his clients or customers under (a) of this section, must request APOC Form 39-0, entitled "Claimed Exemption Report," from the commission. The form, which must be filed with and attached to the individual's conflict-of-interest statement, and signed under oath and on penalty of perjury, requires that the following information be disclosed:

(1) if the individual is claiming total exemption from the requirement, as in (a)(1), (2). (3), or (4) of this section, then he must

(A) state that the primary focus of his practice is the treatment of patients seeking psychiatric or psychological therapy, or seeking treatment related to sexual problems, venereal disease, contraception, or abortion, and that he is generally known in the area in which he practices as specializing in that practice;

(B) state that all income resulting from patients that was not derived as described in (1)(A) of this subsection was received in the practice of his profession and that all nonprofession related income is reported separately in Part 3 of the report, and followed by the letters "NE" (not exempt) to so identify;

(2) if the individual is claiming an exemption for some, but not all, of his clients or customers, as in (a)(5) or (6) of this section, then he must state the number of exemptions he is claiming in each of the applicable exempted categories listed on the form.

(f) An individual who must submit a report pursuant to AS 39.50, and who is required to list the names of his clients or customers, but who has been granted an exemption pursuant to (b), (c), or (g) of this section, will be furnished a completed copy of APOC Form 39-0, entitled "Claimed Exemption Report," from the commission within 10 days of the favorable decision granting the exemption. The original of the form will be placed in the individual's file.

(g) Any person not exempted by (a) of this section may claim an exemption either under the Alaska Constitution, art. I, sec. 22 (right of privacy) or under AS 39.50.035 (legally privileged professional relationship may preclude complete compliance) by proceeding as follows:

(1) As soon as practicable, but in any event no later than the time for filing the initial disclosure report, or, in the case of the annual filing, by April 15 of each following year, advise the commission of the claimed exemption and the reason for it, and request a staff ruling on the matter; if, in doing so, the person claiming the exemption finds that it may be necessary to reveal to the staff information which he believes is confidential, he shall so indicate, and that information must be kept confidential until an unappealed staff or commission ruling is made or the release is authorized by a court of competent jurisdiction.

(2) The staff will rule on a request within 30 days after its receipt. If the ruling of the staff is

favorable to the person claiming the exemption, he need not disclose, and that ruling is final and closed with respect to the report for that year. If a request for an exemption is made in a future year on the same grounds, it is granted unless a relevant change of facts or law (or the general understanding of either or both) has intervened.

(3) If the ruling of the commission's staff is adverse to the person making the request, he may appeal to the commission by filing a written notice of appeal and stating his reasons for it with the commission's staff no later than 30 days after receiving notice of the staff's ruling. Unless the staff's ruling is appealed within the time required, it is final. The commission will not hear an appeal if the notice and statement of reasons for it are not filed within the time required.

(4) An appeal timely made to the commission will be heard at the next regular meeting of the commission held more than 30 days after the filing, unless the appellant and the commission agree upon another time for the hearing.

(5) The hearing will be recorded. At the hearing, appellant may be represented by counsel and may request that the hearing be held in private in order to protect a person's character or otherwise avoid disclosing the information claimed as protected. Appellant presents his case first. The commission staff then presents its case. Strict rules of evidence do not apply, but the commission gives slight weight to the kind of information that would not be relied upon by prudent persons in the conduct of important affairs. Witnesses are sworn and testify upon oath. Legal arguments may be supported by a written memorandum. Either the appellant or the commission staff may, upon request to the commission – and shall upon the request of the commission – made no later than at the close of the hearing, file a post-hearing memorandum in support of its position within 15 days of the close of the hearing.

(6) Within 30 days after the close of the hearing the commission will make its decision and immediately thereafter notify the appellant of the result.

(7) If the decision of the commission is favorable to the appellant, he need not disclose, and that decision is final and closed with respect to the report for that year. If a request for an exemption based on the same grounds is made in a future year, it will be granted unless a relevant change of facts or law (or general understanding or either or both) has intervened.

(8) If the decision is adverse, the appellant has 30 days in which to appeal on the record to the superior court under Rule 45 of the Appellate Rules of the Alaska Court System. If a timely appeal is not made and the appellant continues not to disclose, the matter will be referred to the attorney general for appropriate action.

(9) Tapes of the hearing must be made available upon request to the appellant or his attorney or agent for listening within the offices of the commission. Transcripts of the hearing must be prepared by the commissior staff upon request, with costs to be borne by the appellant.

(h) In considering the request for a ruling on the claimed exemption, the commission staff may seek an opinion from the attorney general as to whether it may reasonably be said that the state courts have determined that the constitutional right of privacy or legally privileged professional relationships preclude complete compliance with respect to the exemption claimed. If the attorney general finds that state courts have so determined, the staff ruling must be in favor of the person claiming the exemption, unless the facts he adduces fail to show that he falls within the scope of the exemption. If, in the attorney general's opinion, the courts have not determined that there is a bar to complete compliance with respect to the exemption claimed, the staff shall rule adversely.

(i) Until the matter has been finally decided administratively or judicially against him, a person claiming an exemption from disclosure requirements is not considered to be in wilful violation of the law for failure to disclose or file a report with respect to the subject of his claimed exemption, unless he thereafter continues to refuse or fails to disclose or it is judicially determined that his claim of exemption was not made in good faith but rather was made without any reasonable prospect for succeeding.

(j) Nothing in this section precludes the commission or its staff from determining on its own initiative that information disclosed to it is either protected by the constitutional right of privacy or legally privileged, even if neither is claimed. Upon that determination, the information must be placed in a secure, confidential place, and, if it is also determined that there cannot reasonably be a good reason for retaining the information, it must be destroyed. (Eff. 9/9/78, Reg. 67; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 39.50.035
AS 39.50.050(b)

2 AAC 50.105. FILING BY A STATE PUBLIC OFFICIAL OR A CANDIDATE FOR STATE ELECTIVE OFFICE. (a) All reports required to be filed under the provisions of AS 39.50 and this chapter must be received by the commission on or before the due date. "Received" means either

(1) hand-carried to the commission's central office or its branch office in the state capital; or

(2) postmarked. The date shown by the postmark is presumed to be the date it was deposited in the United States mail.

(b) A person hired or appointed as an ombudsman, or hired or appointed within the executive branch as a department head, deputy department head, or division head, or as an assistant to the governor, must file a conflict-of-interest statement

(1) within 30 days of the first day of work for which compensation is received by the official; and

(2) no later than April 15 in each following year.

(c) A person hired or appointed as a commission chairman, or member of a state commission or board specified in AS 39.50.200(9) must file a conflict-of-interest statement

(1) within 30 days of the date the board member signs his oath of office, and

(2) no later than April 15 in each following year.

(d) A judicial officer must file a conflict-of-interest statement

(1) within 30 days of the date the judicial officer is sworn into office; and

(2) no later than April 15 in each following year.

(e) A legislator, the governor, and the lieutenant governor must file a conflict-of-interest statement no later than April 15 of each year.

(f) An incumbent state public official who campaigns for state public office need not file a conflict-of-interest statement at the time of filing a declaration of candidacy, or within 30 days of filing a petition or within 30 days of becoming a candidate by any other means, so long as a statement covering the year preceding the year in which he declares for office with the lieutenant governor is currently on file with the commission. Incumbent state public officials filing for elective municipal office must file a separate statement with the clerk of the municipality in which they seek public office. (Eff. 9/9/78, Reg. 67; am 5/14/80, Reg. 74)

Authority: AS 15.13.030(10)
AS 39.50.020
AS 39.50.050(b)
AS 39.50.200(1),(2), and (10)

2 AAC 50.110. CIVIL PENALTY ASSESSMENTS FOR LATE FILING OF A REPORT BY A STATE PUBLIC OFFICIAL. (a) The conflict-of-interest statement of a state public official is delinquent if not received by the commission on or before the due date.

(b) The statement continues to be delinquent and subject to a civil penalty until received by the commission, or until the state public official resigns or is removed from office for refusal or failure to file. Resignation or removal from office, however, does not relieve the official from the requirement that he file the conflict-of-interest statement.

(c) Commission staff will send notice to the state public official that he is delinquent, and

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MARY A. NORDALE

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J. John Kranich, Jr.

February 2, 1982

Arthur S. Hansen, D.D.S.
3487 Airport Way
Fairbanks, Alaska 99701

Re: APOC disclosure requirements
Our File No. 62-3154

Dear Art:

You have asked for a memorandum on the legal questions posed for you by the provisions of AS39.50.010 et seq. and the regulations issued pursuant thereto.

Statement of Facts

Arthur S. Hansen, D.D.S., is a duly licensed dentist practicing denistry as an employee of Arthur S. Hansen, D.D.S., a Professional Corporation. In 1981 he declared himself a candidate for membership on the Fairbanks North Star Borough School Board and in conjunction with the filing of his declaration of candidacy, filed a conflict of interest disclosure from and request for exemption with the Alaska Public Officers Commission pursuant to AS 39.50.020-030 and 2 AAC 50.100. Arthur S. Hansen was not elected to the School Board in the election held in October, 1981. After the election the APOC ruled against Hansen's claim of privilege and demanded submission of the names of all patients of Arthur S. Hansen DDS, a Professional Corporation, receiving services for which they paid in excess of $100.00. Hansen has refused to submit the information and the APOC has declared its intention of submitting the matter to the Attorney General for further action.

Applicable Law

1. AS 39.50.010 et seq. This Chapter requires financial disclosure of public officials and candidates, including disclosure of the finanacial interests of members of this family.

2. 2 AAC 50.090-320. These regulations set forth in modest detail the information required and the methods by which the APOC will enforce the statutory requirements.

3. AS 10.45.090-250. This Chapter is the Alaska Professional Corporations Act which permits a person or persons licensed to perform professional services to incorporate their business. This statute permits the provision of professional services through a corporate business entity subject to restrictions on the shareholders, the disposition of shares, and qualifications of directors. Additionally the statute preserves the traditional relationship between the person providing the service and the recipient insofar as the rights, duties and liabilities between them are concerned. The statute also made the corporation jointly and severally liable with the professional employee to the service recipient. In all other respects, a professional corporation must operate pursuant to the Alaska Business Corporation Act, AS 10.05.010.594.

4. Article I, Sec. 22, Alaska Constitution. This section guarantees a right of the people to privacy and is applicable under the present circumstances to Arthur S. Hansen, D.D.S., the professional corporation and to the recipients of services of the corporation.

Memorandum

In Falcon v. APOC, 570 P.2d 469 (Alaska 1977) the Court was confronted with the question of whether or not a physican should be required to disclose the names of his patients paying more than $100.00 for services in order to comply with AS 39.50.200. Dr. Falcon was an employee of a professional corporation known as Kodiak Island Medical Center. AS 39.50.200(a)(8) defines source of income as a client or patient of a professional corporation.

In Falcon the court held that the provisions of AS 39.50.200 were not an impermissible infringement of the patient's constitutional right of privacy. In his argument Falcon apparently pointed out that the Alaska State Medical Association Council had declared that publication of the names of patients of Alaska Medical Board members to be a violation of professional ethics, but the Court held that such a declaration could not be construed as amending or modifying the provisions of AS 39.50.200 and further buttressed that by citing cases that had held that disclosure only of the name of a patient was not an invasion of the evidentiary doctor-patient privilege.

However, the Court did find that in certain instances, some of which it described, mere disclosure of a patient's name would constitute an impermissible invasion of a patient's right of privacy. The APOC merely lifted from Falcon the instances in which the Court thought an impermissible invasion might occur insofar as a physican's patient's right

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of privacy is concerned and did not address similar questions which might arise in the delivery of other professional services.

One aspect of the statute which has received only cursory consideration is whether or not the requirement of disclosure constitutes such a burden on the office holder or candidate as to have a chilling effect upon all professions delivering services to individuals so as to prevent their members from seeking and holding public office.

2 AAC 5.050 excludes retail charge accounts, revolving charge accounts and credit card sales. Likewise, all cash customers are excluded. These exclusions would seem not to fall within any zone of privacy of a customer or a retail business, but to be the result of a practical determination that compliance would be unduly burdensome. It probably also stems from a belief that retail business transactions do not give rise to a relationship from which influence would flow. Nothing in the statute forms a basis for such a belief and it can only be assumed that the excluded retail transactions would constitute too great a burden.

The Falcon case did not address the benefit-burden problem, only the scope of the physician - client privilege. Thus, we have neither a statutory nor a judicial determination of the extent of influence a retail customer might be able to exert.

Another practical aspect of the regulations and the statute which has escaped legislators and the APOC is that the area of greatest conflict in which a professional might be found is in professional considerations or matters of particular concern to the profession, i.e., medical malpractice.

To return to the chilling effect, a professional desiring to offer himself for public office would have to plan approximately 18 months ahead of the last filing date so as to be prepared with the names of his patients or clients.

Neither the statute nor the regulations imposes a duty upon the APOC to act in a timely fashion upon the application for exemption filed by a declared candidate. Thus, as in this case, the Commission may fail or refuse to act on an application for an exemption until either the election has been held or it is too late to withdraw a candidacy. In such event, the purpose of the statute are defeated and candidates who believe themselves entitled to claim a privilege in behalf of others are subjected to the possible imposition of penalties they are entitled by law to avoid.

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In summary and to return to the state of the law applicable, all professions whether sole proprietors, partners or employees of professional corporations must disclose the names of all persons receiving services for which those persons paid $100.00 or more in the preceding year, unless those recipients fall within the classes of persons who are protected by 2 AAC 50.100.

Penalties

AS 39.50.060(a) provides that a person who refuses or knowingly fails to disclose information is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100.00 and not more than $1,000.00 or by imprisonment for not more than 6 months or both.

Additionally, one who is elected or appointed shall forfeit his office. See APOC v. Marshall, Op. No. 2406 (1981).

AS 39.50.135 permits the imposition of a civil penalty of not more than $10.00 per day. 2 AAC 50.110 sets the schedule of civil penalties but the regulation is applicable only to public officials. The definition of public official contained in AS 39.50.200 does not include candidates. 2 AAC 50.135 sets a similar schedule for municipal officers.

Sincerely yours,

LAW OFFICES OF MARY A. NORDALE

Mary A. Nordale

MAN/jm

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SB 181 (cont'd)

Sections 16 & 18 add to AS 47.23.150 (Required Notice in Administrative Enforcement of Support Orders) and 47.23.160 (Admin. Establishment of Support Obligations; Notice & Finding of Financial Responsibiliby): "Refusal by the obligor to accept notice . . . is considered service as of the time of refusal."

Sec. 21 adds new section to AS 47.23 relating to the ratification by the court of administrative orders. States that an administrative support order issued under chapter may be forwarded to the Superior Court. Unless a notice of appeal is filed within 30 days, the court may enter an order confirming the support order.

Secs. 22 & 23 make technical amendments to 47.23.190 by deleting from "obligee or his custodian" the words "or his custodian" since obligee was redefined as being the custodian rather than the child.

Sec. 24 repeals and re-enacts AS 47.23.250 (Order to Withhold and Deliver). Section allows agency to issue to "any person, political subdivision, or department of the state an order to withhold and deliver property" if after 30 days from the date of service of notice under 47.23.150, or from the date of service of a notice and finding of financial responsibility, an obligor has failed to make child support payments. The section as repealed and re-enacted is identical to the existing section with the addition of two new subsections (subsecs. (f) & (g) in the bill) which state: "(f) A person, political subdivision, or department of the state which regularly incurs additional indebtedness to the obligor shall continue to withhold and deliver money as it comes due and owing until the liability of the obligor under AS 47.23.150 is satisfied. (g) An order to withhold and deliver issued to the Department of Revenue is effective upon receipt by the Department and remains effective for that calendar year. The order shall be sufficient to subject any tax refund or other disbursements due to be issued to the obligor in that year to the provisions of this section even though the tax refund or disbursement may be issued more than 30 days after the order."

Does not provide for effective date.

Introduced February 16 and referred to Health, Education and Social Services and Judiciary.

Motor Fuel Tax (watercraft) (repeal of)

SENATE BILL NO. 182, by Senators Mulcahy, Eliason, Ziegler, Ray, Hohman and Ferguson. Identical to HB 101, page 179.

Introduced February 16 and referred to Transportation & Finance.

Financial Disclosure (exempting physicians)

SENATE BILL NO. 183, by Senator Mulcahy by request. Exempts physicians from the financial disclosure requirements of AS 39.50 (Conflict of interest for public officers & candidates for elective office). Adds new subsection to AS 39.50.030 (contents of financial disclosure statement) to read: "A public official, a candidate for state elective office, or a candidate for elective municipal office who is a physician licensed under AS 08.64 is not required to report the name of a person who is his patient or a patient of an entity which is a source of income to him." Pro-

SB 183 (cont'd)

vides Act effective April 14, 1981.

Introduced February 16 and referred to State Affairs and Judiciary.

Appropriations (special) (medical evacuations)

SENATE BILL NO. 184, by Senator Ferguson. Appropriates $100,000 from the general fund to the Dept. of Health & Social Services for payment as a grants to the Kotzebue Public Health Service Hospital ($50,000) and to the Norton Sound Hospital ($50,000) for medical evacuations. Appropriations shall be disbursed in accordance with AS 37.05.315 (State Grants). Provides Act effective immediately.

Introduced February 16 and referred to Health, Education & Social Services and Finance.

Appropriation (supplemental) (AHFC Mortgage Loans)

SENATE BILL NO. 185, by Senator Bennett. Appropriates $150 million from the general fund to the Alaska Housing Finance Corporation, Dept. of Revenue, for the Special Mortgage Loan Purchase Program (AS 18.56.098) for the fiscal year ending June 30, 1981. Provides Act effective immediately.

Introduced February 16 and referred to Finance.

Note: this bill was reported out of committee this week. See page 274.

Interstate Corrections Compact (adopting)

SENATE BILL NO. 186, by the Rules Committee by request of the Governor. Adopts the Interstate Corrections Compact. Art. 1, "Purpose and Policy" of the Act states: "The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide those facilities and programs on a basis of cooperation with one another, thereby serving the best interest of the offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources." Provisions of compact are added to AS 33 under new Chapter 27, "Interstate Corrections Compact." Effective immediately.

In his message transmitting the bill to the Senate for consideration, Governor Hammond stated:

> Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill which would make Alaska a party to the Interstate Corrections Compact.
>
> Under current law, Alaska is a party to the Western Interstate Corrections Compact, along with eleven other states. This measure is similar to that compact; however, it allows the state a broader choice of correctional facilities nationwide in which prisoners may be incarcerated than is presently available. By joining the Interstate Corrections Compact, Alaska will be able to place offenders in an additional eleven states. It is not necessary to withdraw from the Western Interstate Corrections Compact in order to become a party to this compact.

SB

193

COMMITTEE REPORT

SENATE

5/15/81

FURTHER: None

Date: March 31, 1982

Mr. President:

The Committee on JUDICIARY has had SB 193

amending the State personnel Act

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SB 193 [X] same title [ ] new title

and recommends DO PASS

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Bob A Anderson J.

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Robert Pan McLe

CHAIRMAN

Be prepared

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

POUCH C
JUNEAU, ALASKA 99811

465-2200

April 20, 1982

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

Dear Mr. Chairman:

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

1. Delete Sec. 39.25.120(17)

2. Delete Section 12

3. Add to Sec. 39.25.150(5)
(;) including preference for local residents under appropriate circumstances;

4. Delete Section 16

Your consideration of these changes is greatly appreciated.

Respectfully,

W. R. Hudson
Commissioner

WRH/mjc
cc: Honorable Ramona Barnes
Chairwoman, House Judiciary Committee

Keith Specking
Legislative Assistant
Office of the Governor

02-B9LH

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 5, 1982

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

Dear Chairwoman Barnes:

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

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

Amendment 1:

Page 7, line 8

Change semi-colon to period so that line reads:

Offices Commission (;) .

Page 7, line 9

Delete paragraph 17.

Amendment 2:

Page 8, line 1

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

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

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

Amendment 3:

Page 10, line 2

Add language to paragraph 5 so that it reads:

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

Amendment 4:

Page 15, line 20

Change existing Section 16(c) to:

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

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

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

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

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

Thank you for your consideration of these amendments.

Sincerely,

Keith W. Specking
Legislative Assistant
to the Governor

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

The Honorable William R. Hudson
Commissioner, Department of Administration

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 14, 1982

SUBJECT: HCS CSSB 193 (Judiciary)

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

FROM: Linn H. Asper
Legislative Counsel

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

1. In *Sec. 11, the proposed AS 39.25.140 has been deleted. This means that the comprehensive amendments to personnel rules adoption procedures that were passed by the Senate have been eliminated in favor of existing law on the subject. The Judiciary committee substitute changes AS 39.25.140(e) by making publication of personnel rules in the Alaska Administrative Register and Code mandatory instead of permissive.

2. In *Sec. 12, the proposed AS 39.25.150(3) has been changed to add language requiring open competitive examinations, when appropriate, in the employee selection process under the personnel rules. This change encourages the use of open competitive examinations in the state employee selection process without requiring them that they be used.

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

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

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

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

LHA:ljb

Alaska State Legislature

JUNEAU, ALASKA

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

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

MEMORANDUM

April 30, 1982

TO: House Judiciary Committee

FROM: Teresa B. Cramer TBC
Administrative Assistant

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

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

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

Page 2
Lines 6-25

Section 6. Amending AS 39.25.080. PUBLIC RECORDS.

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

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

Page 2
Line 27 ff.

Section 7. Amending AS 39.25.090. COVERAGE OF CHAPTER.

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

Section 8. Amending AS 39.25.110. EXEMPT SERVICE.

Page 5
Line 2

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

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

Page 4
Line 7 ff

Page 7
Line 9

Section 9. Amending AS 39.25.120. PARTIALLY EXEMPT SERVICE.

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

Page 8
Line 1 ff

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

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

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

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

Page 8
Line 29 ff

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

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

Page 11
Line 2

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

Page 11
Line 4

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

Page 11
Line 10

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

Page 12
Line 21

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

Page 12
Line 27

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

Page 13
Line 4 ff

Section 14. Amending AS 39.25.153. PERSONNEL OFFICERS.

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

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

Page 13
Line 28

Section 15. Amending AS 39.25.160. GENERALLY.

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

Page 14
Line 7

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

Page 14
Line 12

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

Page 14
Line 18

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

Page 15
Line 11 ff

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

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

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

TBC:lmk

APEA
3/31/81

PROPOSED AMENDMENTS TO SB 193

Section 8

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

(A) Alaska Gas Pipeline Financing Authority;

(B) Alaska Permanent Fund Corporation;

(C) Alaska Energy Center;

(D) Alaska Industrial Development Authority;

(12) the executive officer of the Alaska Commission on Postsecondary Education and the Alaska Commercial Fisheries Entry Commission.

COMMENTS

In order to place the employees of the Alaska Commission on Postsecondary Education and Alaska Commercial Fisheries Entry Commission in classified service, the following changes are necessary:

TITLE would have amended

Sec. 16.43.080 is amended to read as follows:

Sec. 66.43.080. Employment of personnel. (a) The commission may employ those persons necessary to carry out the purposes of this chapter. [EMPLOYEES] The executive officer of the commission [ARE] is in the exempt service under AS 39.25.110. Other employees of the commission are in the classified service.

Sec. 14.40.913 is amended to read as follows:

Sec 14.40.913. Executive officer and staff; administration. (a) The commission may employ those persons necessary to carry out the purposes of this chapter. The commission may appoint an executive officer. The executive officer is a member of the exempt service under AS 39.25.110, serves at the pleasure of the commission, and he receives compensation fixed by the commission. Other employees of the commission are in the classified service [THE EXECUTIVE OFFICER APPOINTS PERSONS TO THE STAFF POSITIONS AUTHORIZED BY THE COMMISSION, AND STAFF COMPENSATION IS FIXED BY THE COMMISSION.] The executive officer is the executive secretary of the student financial aid committee. Each employee of the commission shall elect membership either in the state teachers' retirement system (AS 14.25), if qualified, or in the public employees' retirement system (AS 39.35).

PROPOSED AMENDMENTS TO SB 193

Section 12

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.

(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.

COMMENTS

Paragraphs d, e, and f were deleted. Paragraphs e-1 through e-5 become c-1 through c-5 subsections.

The subjects included as matters of public policy are all negotiable items under the collective bargaining process.

PROPOSED AMENDMENTS TO SB 193

Section 13 AS 39.25.150 (3)

(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;

COMMENTS

While capacity and the fitness of an individual may be tested, it is impossible to test an individual's efficiency.

PROPOSED AMENDMENTS TO SB 193

Section 15 AS 39.25.160

(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 withheld on the basis of unlawful discrimination due to race, religion, color or national origin, or because of his age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, parenthood, or any other non merit reason.

(g) Action affecting the employment status of an employee in the classified service or an applicant for a position in the classified service, including appointment, promotion, demotion, suspension, or removal, may not be taken or withheld on the basis of unlawful discrimination due to race, religion, color or natonal origin, or because of his age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age physical handicap, sex, marital status, changes in marital status, pregnancy, parenthood, political beliefs, or any other non merit reason.

PROPOSED AMENDMENTS TO SB 193

Section 16 AS 39.25.170

(c) An employee who has been dismissed, demoted, or suspended due to unlawful discrimination based on race, religion, color or national origin, or because of his age, physical handicap, sex, marital status changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, parenthood, or any other non merit reason 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 or based on race, religion, color or national origin, or because of his age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, parenthood, political beliefs, or any other non merit reason may appeal the action of the personnel board.

SEE PAGE 4 NOTE

Original sponsor: Rules/Legislative Council

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 193 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act amending state personnel laws; and providing for an effective date."

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

* Section 1. AS 39.25.040 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.

* 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.

* 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];

* 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;

* 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.

* 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.

* 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 exempt and partially exempt service as specifically pro-

vided.

* 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) certificated teachers employed by the Department of Education as correspondence teachers or teachers in skill centers operated by the Department of Education;

(9) patients and inmates employed in state institutions;

(10) 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;

(11) members of boards, commissions, or authorities;

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

(A) Alaska Gas Pipeline Financing Authority;

(B) Alaska Permanent Fund Corporation;

(C) Alaska Energy Center;

(D) Alaska Industrial Development Authority;

(E) Alaska Commercial Fisheries Entry Commission;

~~(13)~~ the executive officer of the Alaska Commission on Post-secondary Education;

(14) the ombudsman and his staff;

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

(16) 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;

(17) petroleum engineers and petroleum geologists employed in a professional capacity by the Department of Natural Resources except for those employed in the division of geological and geophysical surveys; Sec. 31 05 023(b) OIL + GAS CONSERVATION COMMISSION

(18) 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;

(19) 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;

(20) officers and employees of the state who reside in foreign countries;

(21) employees of the Alaska Seafood Marketing Institute.

* 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).

(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, but the number may be increased if the partially exempt service is extended under AS 39.25.130 to include the additional special assistants;

(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 executive director, but not other staff, of the Older Alaskans Commission in the Department of Administration.

* 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.

* 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].

* 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) 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).

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

(e) 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.

(f) The personnel board may amend the proposed amendments.

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

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

* 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 rec-

tor 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;

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

(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 another 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 perfor-