

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

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LWOP for an initial period of up to 1 year from the date OWCP compensation began.

.92 Extensions. If the employee is unable to return to work at the end of the 1 year period on LWOP, the LWOP may be extended for successive additional periods of up to 6 months. Extensions are granted only if it appears that the employee is likely to return to work within the period of the extension.

.93 Separations. If it is not likely that the employee will be able to return to work at the end of one year of LWOP or during the authorized extended period, the employee may be separated. Before any employee who is on the rolls of the OWCP can be separated, the postal official must submit a comprehensive report to the General Manager, Employee Relations (Region), with appropriate recommendations and retain the employee on the rolls of the Postal Service pending a decision.

.94 Deciding Appropriate Action. In considering the action to take in matters involving extended leave, the installation head sends Form 2573, *Request for OWCP Claim Status*, in duplicate, to the appropriate OWCP district office; and, upon receiving a completed Form 2573 from OWCP, does one of the following:

a. Extends LWOP for an additional period, at the end of which an additional determination must be made;

b. Authorizes a fitness-for-duty examination by a medical officer as provided in 547.31, .32, and .33 if OWCP does not respond within a maximum of 60 days or if OWCP's response does not explain the situation; or

c. Request permission to terminate LWOP as required in .93; and

d. Terminates LWOP after receiving permission from the General Manager, Employee Relations (Region) as follows:

(1) If the employee has 5 or more years of creditable civilian service, inform the employee of retirement rights. Allow the employee 14 calendar days to file a retirement application under the Civil Service Retirement Act.

(2) If the employee does not file a retirement application within the 14 day period, terminate LWOP and take action to separate the employee as described in 365 and 568.

(3) If the employee has less than 5 years creditable civilian service, terminate LWOP and take action to separate the employee as described in 365.

546 Reemployment of Employees Injured On Duty

546.1 Law

.11 General. The USPS has legal responsibility to employees with job-related disabilities under 5 U.S.C. 8151 and the Office of Personnel Management's (OPM) regulations, as outlined below.

.12 Disability Fully Overcome Within 1 Year

.121 Obligation. When the injury or disability is fully overcome within one year after the commencement of compensation payments from OWCP, or after compensable disability recurs, the USPS must give an

employee the right to resume employment in the former or equivalent position.

.122 Rights and Benefits. Upon reemployment, all rights and benefits which an employee would have had or acquired in the former position, had there been no injury or disability, must be restored.

.13 Disability Fully Overcome More Than 1 Year

.131 Obligation. When the injury or disability is fully overcome more than one year after compensation began, the USPS must give an employee priority consideration for reemployment into the former position or an equivalent one.

.132 Reemployment List. The names of all former employees who fully recover from their compensable disabilities more than one year after compensation begins must be entered on a reemployment list in two groups. *Group one* will include all such former employees who are entitled to 10 point veteran preference. *Group two* will include all other such former employees. Persons in *group one* will be considered for employment before persons in *group two*, and persons in *group two* will be considered before other sources of recruitment, such as transfers from other agencies, reinstatements, or appointments from hiring registers.

.133 Rights and Benefits. The same as 546.122.

.14 Disability Partially Overcome

.141 Current Employees. When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerances (see 546.32). In assigning such limited duty, the USPS should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments:

a. To the extent that there is adequate work available within the employee's work limitation tolerances; within the employee's craft; in the work facility to which the employee is regularly assigned; and during the hours when the employee regularly works; that work shall constitute the limited duty to which the employee is assigned.

b. If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned, within the employee's regular hours of duty, other work may be assigned within that facility.

c. If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts shall be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.

d. An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort will

be made to assign the employee to work within the employee's craft, within the employee's regular schedule, and as near as possible to the regular work facility to which normally assigned.

.142 Former Employees. When a former employee has partially recovered from a compensable injury or disability, the USPS must make every effort toward reemployment consistent with medically defined work limitation tolerances. Such an employee may be returned to any position for which qualified, including a lower grade position than that held when compensation began.

.15 Employee Appeal Rights. An employee who believes the proper consideration for reemployment was not received may appeal to the Merit Systems Protection Board, under 5 CFR, 353.

546.2 Collective Bargaining Agreements

Reemployment under this section will be in compliance with applicable collective bargaining agreements. Individuals so reemployed will receive all appropriate rights and protection under the applicable collective bargaining agreement.

.21 Contractual Considerations

.211 Scope. Collective bargaining agreement provisions for filling job vacancies and promotions, and procedures relating to retreat rights due to reassignment, will be complied with before an offer of employment is made to a former postal employee on the OWCP rolls for more than 1 year.

.212 Reemployment. A former employee will be offered reemployment in a residual vacancy (a vacancy which has been posted for bid or application and for which there are no successful bidders or applicants), or may work as an unassigned regular or as a part-time flexible. Regional Directors, Employee and Labor Relations (APMG, Employee Relations, for Headquarters and Administrative Support Facilities (ASFs) may waive minimum qualification requirements (including written examinations) in individual cases for former employees injured on duty who are being considered for reemployment when there is evidence (including that submitted by the medical officer) that the employee can be expected to perform satisfactorily in the position within ninety days after assignment.

.22 Types of Appointments

.221 Former career employees will be reemployed as career full-time or part-time employees.

.222 Former substitute rural carriers will be reemployed as substitute rural carriers or in any other position for which they qualify.

.223 Former casual and temporary employees will be reemployed as casual or temporary employees. Upon satisfactory demonstration of ability to meet job requirements during two 90-day casual appointments or one 180-day temporary appointment, the employee's

status may be noncompetitively converted to a career appointment (NOA 501).

546.3 OWCP Referrals

.31 General. OWCP will make referrals of current and former postal employees who may be candidates for reemployment.

.32 Work Limitation Tolerances. The individual's physician of record, or other physician selected by the individual or OWCP, will furnish OWCP with a definitive medical summary, clearly documenting the medical limitations that will have to be accommodated. The OWCP District Medical Director evaluates the work limitation tolerances submitted by the physician of record, and upon concurrence, refers them to the USPS for consideration.

.33 USPS Medical Review

.321 Reemployment Physical Examination

a. The medical officer will evaluate fully all medical records referred to the USPS from the OWCP district offices.

b. A complete physical examination, paid for by the USPS, will be required by the appointing officer. The result of the physical examination will be documented on Form 2485, *Certificate of Medical Examination*.

c. The medical officer will make a statement of concurrence with the OWCP documented medical limitations, or further restrict the former employee's work limit tolerances. The medical officer can in no way liberalize the medical limitations tendered by the OWCP district offices.

.322 Special Considerations

a. An individual referred for reemployment consideration by OWCP may have some degree of concurrent disability, not caused by or related to the original job injury or disability. The medical officer should examine for any concurrent medical condition that might prevent the individual from performing the duties of the position for which the individual is being considered.

b. The medical officer will carefully evaluate all concurrent disabilities and include their potential impact in the recommendation for reemployment to the appointing official.

c. All former employees, now permanently, partially disabled, have some type of residual handicap. The medical officer, conducting the physical examination, will be responsible for assigning the correct handicap code as defined in Handbook P-11, *Personnel Operations*, Chapter 6.

546.4 Restoration Rights

.41 OPM Regulations. OPM has responsibility for the implementing regulations of 5 USC 8151. These regulations are codified in 5 CFR Part 353. 5 USC 8151(a) provides that an individual, injured or disabled on duty, who resumes employment with the USPS is to be credited with the time during which compensation

was received for purposes of certain rights and benefits based upon length of service.

.42 Rights and Benefits upon Partial Recovery

.421 Seniority. Individuals, reemployed into bargaining unit positions will be credited with seniority in accordance with the collective bargaining agreement covering the position to which reemployed.

.422 Probationary Period. Reemployed individuals who have completed their probationary periods, or would have completed their probationary periods but for their compensable injuries, will not be required to serve a new probationary period.

.423 Leave Credit. Former employees who were eligible to accrue leave under ELM 510 will be credited with the total time compensation was received from OWCP for purposes of computing leave rate accrual upon reemployment.

.424 Retirement. Former employees who were covered by the Civil Service Retirement Act (see ELM 560) will be credited with the time spent on OWCP compensation in computing retirement credit.

.425 Salary Determination. The following salary restoration criteria must be met (*Note: The term "Grade/Step," as used below, means "Grade/Salary" for individuals in a non-step salary schedule*):

a. Reemployment to the Former Grade/Step. These individuals reemployed into a position with the same grade/step as held at the time of injury or disability will receive the current salary for that grade/step from the appropriate salary schedule.

b. Reemployment to a Higher Grade. Those individuals reemployed to a position with a grade higher than that of the position held at the time of injury or disability will be placed in the higher grade at the current salary for the grade/step held at the time of injury or disability. If that salary is between steps in the higher grade, the individual's salary will be increased to the next higher step.

c. Reemployment to a Lower Grade/Step.

(1) Salary Below Maximum of Lower Grade.

The individual will be placed in any higher step in the lower grade which is less than one full step above the current salary for the grade/step of the position held at the time of injury or disability.

(2) Salary Above Maximum of Lower Grade. In those cases where the current salary for the grade/step held at the time of injury or disability exceeds the maximum salary of the lower grade position, the employee will be afforded a saved rate at the higher grade/step salary. These saved rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.

d. Reemployment to a Position in a Different Salary Schedule. When an individual is reemployed to a position in a salary schedule different from the schedule under which paid at the time of injury or disability, once reemployed, the individual will be treated under the rules applicable to the salary schedule to which reemployed:

(1) The individual will be reemployed at the grade appropriate for the position to which reemployed.

(2) The individual will be placed in any higher step in the new grade which is less than one full step above the current salary for the grade/step of the position held at the time of injury or disability.

(3) If reemployment is to a nonstep schedule, the individual will be placed at a salary equal to the current salary for the grade/step of the position held at the time of injury or disability.

(4) If the current salary for the grade/step held at the time of injury or disability exceeds the maximum salary of the new grade, the individual will be given a saved rate. These saved rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.

e. Former Position Under Different Salary Schedule. Where the position held at the time of injury or disability is no longer under the same salary schedule, the current salary for the former grade/step will be determined by:

(1) Regional Compensation Division, for field, district, and regional positions.

(2) Office of Compensation, Headquarters, for Headquarters and Headquarters-related positions.

f. Step Increases. Upon reemployment, permanently, partially disabled individuals begin a new waiting period for step increases.

.43 Rights and Benefits Upon Full Recovery. See 546.122.

546.5 Retirement Considerations

.51 Status. Pursuant to the Civil Service Retirement Act, a former employee who applied for and received Civil Service disability retirement status will cease to be an annuitant upon reemployment and restoration of that individual's wage earning capacity.

.52 Reinstatement of Eligibility

.521 If an annuitant, reemployed under the procedures in this section, is later found unable to successfully perform in the new position due to the original compensable injury or disability, and is again separated, the employee will be entitled to the restoration of disability retirement status under the Civil Service Retirement Act.

.522 If an employee becomes disabled for the position due to a new injury or disability after entry into that position, the employee would have a right to apply for a new Civil Service disability retirement status.

.53 Refunded Retirement Deductions. A former employee who withdrew retirement deductions based on previous employment, may redeposit the amount refunded, plus interest, after reemployment to a position from which retirement deductions are withheld.

.54 Notification. Upon reemployment or a disability annuitant (or in advance, if possible), the appointing official must notify the Office of Personnel Management, Compensation Group, Room 3305, Attention: Annuitant

Services Division, Washington, DC 20415. The notification must include the individual's name, social security number, date of birth, Civil Service Annuity claim number (CSA-Civil Service Account), date of reemployment, Form 2485, Certificate of Medical Examination and whether retirement deductions will be made from the salary for the position to which reemployed.

546.6 Relocation Considerations

.61 **Scope.** In some cases, former employees receiving OWCP compensation may have relocated to other geographic areas. Every effort must be made to reemploy these individuals within their current area of residence by treating them as if they had been employed at that office at the time of injury. Any offer to reemploy in a different location will be considered only after all reasonable attempts have been made to rehire within the area of the former employee's present domicile.

.62 **Expense.** Any relocation and travel expenses will be the responsibility of the former employee. However, under certain mitigating circumstances the SAPMG for E&LR, or the SAPMG's designee, may authorize relocation and travel expenses consistent with the provisions of Handbook M-9, *Travel*.

546.7 Reemployment Procedures

.71 Offer of Appointment

.711 **Evaluation.** Upon receipt and evaluation of the OWCP referral containing documented medical limitations, and evaluation of the medical officer's recommendations, the appointing official will determine if a reemployment offer can be made.

.712 **Interview.** During the preemployment interview, the appointing officer will ensure that the individual receives the following information:

- a. In-depth analysis of medical limitations and the individual's responsibility to work within the prescribed work limitation tolerances.
- b. If applicable the status of injury compensation and disability retirement benefits and future eligibility.
- c. A full explanation of all restoration rights and benefits (see 546.4).
- d. Full particulars regarding the position, including title, duties, grade, salary, location of work assignment, and all other information required in a preemployment interview. (See Handbook P-11, 264.8 and 265.)
- e. Instructions for completion and submission of any required employment forms.

.713 Appeal

a. Those employees who fully recover in less than one year from the date on which OWCP compensation began, may appeal to the Merit Systems Protection Board (MSPB) if they believe a proposed offer of reemployment does not meet the requirements of Office of

Personnel Management regulations 5 CFR Part 353. The letter of appeal must be submitted within 20 days after the date of the offer or 20 days after the date of reemployment, whichever is later.

b. Those employees or former employees whose full recovery extends beyond one year, or whose partial recovery falls either within or beyond one year of compensation, may appeal to the Merit Systems Protection Board only when they have requested restoration through formal application to the installation head and restoration has been refused them. An appeal to the denial of restoration must be filed with MSPB within 20 days from the day the denial letter is received. Upon restoration, however, the employees are not given the right to appeal the nature of the restoration.

.72 **Refusal of Reemployment Offer.** When a former employee refuses an offer of suitable employment within the OWCP defined medical limitations, the appointing officer must do the following:

- a. Offer the individual an opportunity to sign a declination of employment.
- b. Advise the individual that the effect of such refusal may result in the termination or reduction of compensation benefits by the Department of Labor.
- c. Notify the OWCP district office by telephone of the declination and reasons given.
- d. Within 2 working days, forward a full written summary of the former employee's interview, including the signed declination, and medical evaluations or other pertinent information to the OWCP district office. OWCP has the responsibility to notify the Retirement and Insurance Division, Office of Personnel Management, when disability retirement status is to be evaluated.

.73 **Refusal to Reemploy.** The appointing official may not be able to accommodate the former employee for medical reasons or other considerations. If the former employee will not be reemployed, the appointing officer must:

- a. Notify the employee in writing of that fact, with a copy to the OWCP; and
- b. Include a paragraph informing the individual of the right to appeal to the Merit Systems Protection Board.

.74 **Processing Personnel Actions.** The reemployment of former employees injured or disabled on duty requires uniform information on Form 50-B, *Request for Personnel Action (Processing Copy for New Hires Only)*, before forwarding to the Employee and Labor Relations Information Center. (See 612.5 of Handbook P-11.)

547 Return to Duty

547.1 Therapy Obligations

The installation head must ensure that an employee reports for scheduled therapy treatment. The employee

must be advised that failure to keep appointments with a physician or hospital is a form of absenteeism. Control office/control point personnel will report failures to keep appointments to the OWCP district office.

547.2 Medical Reports

.21 Progress reports received from the attending physician may show the employee is capable of some work during convalescence or after medical treatment has been completed.

.22 If not, this information is requested by the control office/control point from the attending physician or the OWCP district office by use of Form CA-17.

.23 If the attending physician submits a medical report, Form CA-17, indicating that the employee is medically capable of performing some of the normal duties for a limited number of hours, or other work of a different nature than the employee's former assignment, the installation head must make every reasonable effort to place the employee in an appropriate assignment.

547.3 Fitness-For-Duty Determination

.31 **Determining Fitness.** The fact that an injured or ill employee is scheduled for a series of treatments or appointments with a physician or hospital does not, by itself, establish that the employee is not fit-for-duty in the interim. Control personnel will recommend, upon medical justification, to the installation head that any employee being treated by a physician or hospital be required to report to a USPS medical unit (or contract equivalent) for a fitness-for-duty examination. Only an installation head is authorized to approve a fitness-for-duty examination.

.32 **Examination Report.** This physical examination may include the parts of the anatomy being treated, provided the examination in no way disturbs or interferes with the treatment regimen. The results of this examination will be brought to the attention of the OWCP district office for consideration.

.33 **Physician Report Questioned.** If the medical officer questions the medical procedures and/or determination of the employee's attending physician, no administrative action may be taken to change the employee's compensation or employment status until the medical issue is settled.

.34 **Resolving Determination.** The following procedures apply only to fitness-for-duty determinations incident to an on-the-job injury or illness. Fitness-for-duty determinations for other purposes are not covered by this instruction.

a. The physician or hospital must, for each visit of the employee, make a professional statement, using Form CA-17, showing the employee either:

(1) Fit-for-duty; or

(2) Fit for limited duty, and the work tolerance limitations due to the injury; or

(3) Not fit for duty with an expected return-to-duty date.

b. If the physician or hospital is unable to predict an employee's fitness for duty on either a short-term or long-term basis, the control office/control point supervisor may request information from the OWCP sending Form 2573, Request—OWCP Claim Status, in duplicate, to the OWCP district office. If OWCP does not respond within a maximum of 60 days, or if the OWCP response does not explain the situation, a fitness-for-duty examination may be recommended to the installation head as provided in 547.31, .32, and .33. However, a fitness-for-duty examination can be initiated at any time to determine the duty status of the injured employee.

c. If the results of the fitness-for-duty examination disagree with the findings of the attending physician, the matter, along with justification for the USPS position, is referred by the control office/control point supervisor to the OWCP Deputy Commissioner for resolution.

d. A fitness-for-duty determination is not limited to the employee's regular duties, but should be based on whether the employing installation has any temporary alternative duties available which the employee may safely perform.

659.410 Discrimination against workers applying for workers' compensation benefits prohibited. It is an unlawful employment practice for an employer to discriminate against a workman with respect to hire or tenure or any term or condition of employment because the workman has applied for benefits or invoked or utilized the procedures provided for in ORS 656.001 to 656.794 and 656.802 to 656.824, or of 659.400 to 659.435 or has given testimony under the provisions of such sections. [1973 c.660 §4]

659.415 Reinstatement of worker receiving compensable injuries; certificate of physician evidencing ability to work; effect of collective bargaining agreement. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, provided that the position is available and the worker is not disabled from performing the duties of such position. If the former position is not available, the worker shall be reinstated in any other position which is available and suitable. A certificate by a duly licensed physician that the physician approves the worker's return to the worker's regular employment shall be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(3) Any violation of this section is an unlawful employment practice. [1973 c.660 §5; 1979 c.813 §3; 1981 c.874 §14]

659.420 Employment of injured worker in other available and suitable work; certificate of physician; effect of collective bargaining agreement. (1) A worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former regular employment shall, upon demand, be reemployed by the worker's employer at employment which is available and suitable.

(2) A certificate of the worker's attending physician that the worker is able to perform described types of work shall be prima facie evidence of such ability.

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the employer and a representative of the employer's employees.

(4) Any violation of this section is an unlawful employment practice. [1973 c.660 §6; 1979 c.813 §4]

659.425 Discrimination against mentally or physically impaired persons in employment or public accommodation prohibited; mental disorder treatment not evidence of inability to work or manage property. (1) For the purpose of ORS 659.400 to 659.435, it is an unlawful employment practice for any employer to refuse to hire, employ or promote, to bar or discharge from employment or to discriminate in compensation or in terms, conditions or privileges of employment because:

(a) An individual has a physical or mental impairment which, with reasonable accommodation by the employer, does not prevent the performance of the work involved;

(b) An individual has a record of a physical or mental impairment; or

(c) An individual is regarded as having a physical or mental impairment.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise discriminate against, any individual because that individual is a handicapped person, or to classify or refer for employment any individual because that individual is a handicapped person.

(3) It is an unlawful employment practice for a labor organization, because an individual is a handicapped person, to exclude or to expel from its membership such individual or to discriminate in any way against such individual.

(4) It is an unlawful practice for any place of public accommodation, resort or amusement as defined in ORS 30.675, or any person acting on behalf of such place, to make any distinction, discrimination or restriction because a customer or patron is a handicapped person.

(5) Receipt or alleged receipt of treatment for a mental disorder shall not constitute evidence of a person's inability to perform the duties of a particular job or position, or of a person's inability to acquire, rent or maintain property. [1973 c.660 §7; 1979 c.640 §3]

659.430 Discrimination against handicapped persons in real property transactions prohibited; advertising discriminatory preference prohibited; assisting discriminatory practices prohibited. (1) No person because the purchaser, lessee or renter is a handicapped person shall:

LWOP for an initial period of up to 1 year from the date OWCP compensation began.

.92 Extensions. If the employee is unable to return to work at the end of the 1 year period on LWOP, the LWOP may be extended for successive additional periods of up to 6 months. Extensions are granted only if it appears that the employee is likely to return to work within the period of the extension.

.93 Separations. If it is not likely that the employee will be able to return to work at the end of one year of LWOP or during the authorized extended period, the employee may be separated. Before any employee who is on the rolls of the OWCP can be separated, the postal official must submit a comprehensive report to the General Manager, Employee Relations (Region), with appropriate recommendations and retain the employee on the rolls of the Postal Service pending a decision.

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- c. Request permission to terminate LWOP as required in .93; and
- d. Terminates LWOP after receiving permission from the General Manager, Employee Relations (Region) as follows:
 - (1) If the employee has 5 or more years of creditable civilian service, inform the employee of retirement rights. Allow the employee 14 calendar days to file a retirement application under the Civil Service Retirement Act.
 - (2) If the employee does not file a retirement application within the 14 day period, terminate LWOP and take action to separate the employee as described in 365 and 568.
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b. If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned, within the employee's regular hours of duty, other work may be assigned within that facility.

c. If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts shall be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.

d. An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort will

be made to assign the employee to work within the employee's craft, within the employee's regular schedule, and as near as possible to the regular work facility to which normally assigned.

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.212 Reemployment. A former employee will be offered reemployment in a residual vacancy (a vacancy which has been posted for bid or application and for which there are no successful bidders or applicants), or may work as an unassigned regular or as a part-time flexible. Regional Directors, Employee and Labor Relations (APMG, Employee Relations, for Headquarters and Administrative Support Facilities (ASFs) may waive minimum qualification requirements (including written examinations) in individual cases for former employees injured on duty who are being considered for reemployment when there is evidence (including that submitted by the medical officer) that the employee can be expected to perform satisfactorily in the position within ninety days after assignment.

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.222 Former substitute rural carriers will be reemployed as substitute rural carriers or in any other position for which they qualify.

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a. The medical officer will evaluate fully all medical records referred to the USPS from the OWCP district offices.

b. A complete physical examination, paid for by the USPS, will be required by the appointing officer. The result of the physical examination will be documented on Form 2485, *Certificate of Medical Examination*.

c. The medical officer will make a statement of concurrence with the OWCP documented medical limitations, or further restrict the former employee's work limit tolerances. The medical officer can in no way liberalize the medical limitations tendered by the OWCP district offices.

.322 Special Considerations

a. An individual referred for reemployment consideration by OWCP may have some degree of concurrent disability, not caused by or related to the original job injury or disability. The medical officer should examine for any concurrent medical condition that might prevent the individual from performing the duties of the position for which the individual is being considered.

b. The medical officer will carefully evaluate all concurrent disabilities and include their potential impact in the recommendation for reemployment to the appointing official.

c. All former employees, now permanently, partially disabled, have some type of residual handicap. The medical officer, conducting the physical examination, will be responsible for assigning the correct handicap code as defined in Handbook P-11, *Personnel Operations*, Chapter 6.

546.4 Restoration Rights

.41 OPM Regulations. OPM has responsibility for the implementing regulations of 5 USC 8151. These regulations are codified in 5 CFR Part 353. 5 USC 8151(a) provides that an individual, injured or disabled on duty, who resumes employment with the USPS is to be credited with the time during which compensation,

was received for purposes of certain rights and benefits based upon length of service.

.42 Rights and Benefits upon Partial Recovery

.421 Seniority. Individuals, reemployed into bargaining unit positions will be credited with seniority in accordance with the collective bargaining agreement covering the position to which reemployed.

.422 Probationary Period. Reemployed individuals who have completed their probationary periods, or would have completed their probationary periods but for their compensable injuries, will not be required to serve a new probationary period.

.423 Leave Credit. Former employees who were eligible to accrue leave under ELM 510 will be credited with the total time compensation was received from OWCP for purposes of computing leave rate accrual upon reemployment.

.424 Retirement. Former employees who were covered by the Civil Service Retirement Act (see ELM 560) will be credited with the time spent on OWCP compensation in computing retirement credit.

.425 Salary Determination. The following salary restoration criteria must be met (*Note:* The term "Grade/Step," as used below, means "Grade/Salary" for individuals in a non-step salary schedule):

a. Reemployment to the Former Grade/Step. These individuals reemployed into a position with the same grade/step as held at the time of injury or disability will receive the current salary for that grade/step from the appropriate salary schedule.

b. Reemployment to a Higher Grade. Those individuals reemployed to a position with a grade higher than that of the position held at the time of injury or disability will be placed in the higher grade at the current salary for the grade/step held at the time of injury or disability. If that salary is between steps in the higher grade, the individual's salary will be increased to the next higher step.

c. Reemployment to a Lower Grade/Step.

(1) Salary Below Maximum of Lower Grade. The individual will be placed in any higher step in the lower grade which is less than one full step above the current salary for the grade/step of the position held at the time of injury or disability.

(2) Salary Above Maximum of Lower Grade. In those cases where the current salary for the grade/step held at the time of injury or disability exceeds the maximum salary of the lower grade position, the employee will be afforded a saved rate at the higher grade/step salary. These saved rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.

d. Reemployment to a Position in a Different Salary Schedule. When an individual is reemployed to a position in a salary schedule different from the schedule under which paid at the time of injury or disability, once reemployed, the individual will be treated under the rules applicable to the salary schedule to which reemployed:

(1) The individual will be reemployed at the grade appropriate for the position to which reemployed.

(2) The individual will be placed in any higher step in the new grade which is less than one full step above the current salary for the grade/step of the position held at the time of injury or disability.

(3) If reemployment is to a nonstep schedule, the individual will be placed at a salary equal to the current salary for the grade/step of the position held at the time of injury or disability.

(4) If the current salary for the grade/step held at the time of injury or disability exceeds the maximum salary of the new grade, the individual will be given a saved rate. These saved rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.

e. Former Position Under Different Salary Schedule. Where the position held at the time of injury or disability is no longer under the same salary schedule, the current salary for the former grade/step will be determined by:

(1) Regional Compensation Division, for field, district, and regional positions.

(2) Office of Compensation, Headquarters, for Headquarters and Headquarters-related positions.

f. Step Increases. Upon reemployment, permanently, partially disabled individuals begin a new waiting period for step increases.

.43 Rights and Benefits Upon Full Recovery. See 546.122.

546.5 Retirement Considerations

.51 Status. Pursuant to the Civil Service Retirement Act, a former employee who applied for and received Civil Service disability retirement status will cease to be an annuitant upon reemployment and restoration of that individual's wage earning capacity.

.52 Reinstatement of Eligibility

.521 If an annuitant, reemployed under the procedures in this section, is later found unable to successfully perform in the new position due to the original compensable injury or disability, and is again separated, the employee will be entitled to the restoration of disability retirement status under the Civil Service Retirement Act.

.522 If an employee becomes disabled for the position due to a new injury or disability after entry into that position, the employee would have a right to apply for a new Civil Service disability retirement status.

.53 Refunded Retirement Deductions. A former employee who withdrew retirement deductions based on previous employment, may redeposit the amount refunded, plus interest, after reemployment to a position from which retirement deductions are withheld.

.54 Notification. Upon reemployment of a disability annuitant (or in advance, if possible), the appointing official must notify the Office of Personnel Management, Compensation Group, Room 3305, Attention: Annuitant

Services Division, Washington, DC 20415. The notification must include the individual's name, social security number, date of birth, Civil Service Annuity claim number (CSA-Civil Service Account), date of reemployment, Form 2485, Certificate of Medical Examination and whether retirement deductions will be made from the salary for the position to which reemployed.

546.6 Relocation Considerations

.61 *Scope.* In some cases, former employees receiving OWCP compensation may have relocated to other geographic areas. Every effort must be made to reemploy these individuals within their current area of residence by treating them as if they had been employed at that office at the time of injury. Any offer to reemploy in a different location will be considered only after all reasonable attempts have been made to rehire within the area of the former employee's present domicile.

.62 *Expense.* Any relocation and travel expenses will be the responsibility of the former employee. However, under certain mitigating circumstances the SAPMG for E&LR, or the SAPMG's designee, may authorize relocation and travel expenses consistent with the provisions of Handbook M-9, *Travel*.

546.7 Reemployment Procedures

.71 Offer of Appointment

.711 *Evaluation.* Upon receipt and evaluation of the OWCP referral containing documented medical limitations, and evaluation of the medical officer's recommendations, the appointing official will determine if a reemployment offer can be made.

.712 *Interview.* During the preemployment interview, the appointing officer will ensure that the individual receives the following information:

- a. In-depth analysis of medical limitations and the individual's responsibility to work within the prescribed work limitation tolerances.
- b. If applicable the status of injury compensation and disability retirement benefits and future eligibility.
- c. A full explanation of all restoration rights and benefits (see 546.4).
- d. Full particulars regarding the position, including title, duties, grade, salary, location of work assignment, and all other information required in a preemployment interview. (See Handbook P-11, 264.8 and 265.)
- e. Instructions for completion and submission of any required employment forms.

.713 Appeal

a. Those employees who fully recover in less than one year from the date on which OWCP compensation began, may appeal to the Merit Systems Protection Board (MSPB) if they believe a proposed offer of reemployment does not meet the requirements of Office of

Personnel Management regulations 5 CFR Part 353. The letter of appeal must be submitted within 20 days after the date of the offer or 20 days after the date of reemployment, whichever is later.

b. Those employees or former employees whose full recovery extends beyond one year, or whose partial recovery falls either within or beyond one year of compensation, may appeal to the Merit Systems Protection Board only when they have requested restoration through formal application to the installation head and restoration has been refused them. An appeal to the denial of restoration must be filed with MSPB within 20 days from the day the denial letter is received. Upon restoration, however, the employees are not given the right to appeal the nature of the restoration.

.72 *Refusal of Reemployment Offer.* When a former employee refuses an offer of suitable employment within the OWCP defined medical limitations, the appointing officer must do the following:

- a. Offer the individual an opportunity to sign a declination of employment.
- b. Advise the individual that the effect of such refusal may result in the termination or reduction of compensation benefits by the Department of Labor.
- c. Notify the OWCP district office by telephone of the declination and reasons given.
- d. Within 2 working days, forward a full written summary of the former employee's interview, including the signed declination, and medical evaluations or other pertinent information to the OWCP district office. OWCP has the responsibility to notify the Retirement and Insurance Division, Office of Personnel Management, when disability retirement status is to be evaluated.

.73 *Refusal to Reemploy.* The appointing official may not be able to accommodate the former employee for medical reasons or other considerations. If the former employee will not be reemployed, the appointing officer must:

- a. Notify the employee in writing of that fact, with a copy to the OWCP; and
- b. Include a paragraph informing the individual of the right to appeal to the Merit Systems Protection Board.

.74 *Processing Personnel Actions.* The reemployment of former employees injured or disabled on duty requires uniform information on Form 50-B, *Request for Personnel Action (Processing Copy for New Hires Only)*, before forwarding to the Employee and Labor Relations Information Center. (See 612.5 of Handbook P-11.)

547 Return to Duty

547.1 Therapy Obligations

The installation head must ensure that an employee reports for scheduled therapy treatment. The employee

was received for purposes of certain rights and benefits based upon length of service.

.42 Rights and Benefits upon Partial Recovery

.421 Seniority. Individuals, reemployed into bargaining unit positions will be credited with seniority in accordance with the collective bargaining agreement covering the position to which reemployed.

.422 Probationary Period. Reemployed individuals who have completed their probationary periods, or would have completed their probationary periods but for their compensable injuries, will not be required to serve a new probationary period.

.423 Leave Credit. Former employees who were eligible to accrue leave under ELM 510 will be credited with the total time compensation was received from OWCP for purposes of computing leave rate accrual upon reemployment.

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c. Reemployment to a Lower Grade/Step.

(1) *Salary Below Maximum of Lower Grade.*

The individual will be placed in any higher step in the lower grade which is less than one full step above the current salary for the grade/step of the position held at the time of injury or disability.

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(1) The individual will be reemployed at the grade appropriate for the position to which reemployed.

(2) The individual will be placed in any higher step in the new grade when is less than one full step above the current salary for the grade/step of the position held at the time of injury or disability.

(3) If reemployment is to a nonstep schedule, the individual will be placed at a salary equal to the current salary for the grade/step of the position held at the time of injury or disability.

(4) If the current salary for the grade/step held at the time of injury or disability exceeds the maximum salary of the new grade, the individual will be given a saved rate. These saved rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.

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546.5 Retirement Considerations

.51 Status. Pursuant to the Civil Service Retirement Act, a former employee who applied for and received Civil Service disability retirement status will cease to be an annuitant upon reemployment and restoration of that individual's wage earning capacity.

.52 Reinstatement of Eligibility

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.522 If an employee becomes disabled for the position due to a new injury or disability after entry into that position, the employee would have a right to apply for a new Civil Service disability retirement status.

.53 Refunded Retirement Deductions. A former employee who withdrew retirement deductions based on previous employment, may redeposit the amount refunded, plus interest, after reemployment to a position from which retirement deductions are withheld.

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Services Division, Washington, DC 20315. The notification must include the individual's name, social security number, date of birth, Civil Service Annuity claim number (CSA-Civil Service Account), date of reemployment, Form 2485, Certificate of Medical Examination and whether retirement deductions will be made from the salary for the position to which reemployed.

546.6 Relocation Considerations

.61 Scope. In some cases, former employees receiving OWCP compensation may have relocated to other geographic areas. Every effort must be made to reemploy these individuals within their current area of residence by treating them as if they had been employed at that office at the time of injury. Any offer to reemploy in a different location will be considered only after all reasonable attempts have been made to rehire within the area of the former employee's present domicile.

.62 Expense. Any relocation and travel expenses will be the responsibility of the former employee. However, under certain mitigating circumstances the SAPMG for E&LR, or the SAPMG's designee, may authorize relocation and travel expenses consistent with the provisions of Handbook M-9, *Travel*.

546.7 Reemployment Procedures

.71 Offer of Appointment

.711 Evaluation. Upon receipt and evaluation of the OWCP referral containing documented medical limitations, and evaluation of the medical officer's recommendations, the appointing official will determine if a reemployment offer can be made.

.712 Interview. During the preemployment interview, the appointing officer will ensure that the individual receives the following information:

- a. In-depth analysis of medical limitations and the individual's responsibility to work within the prescribed work limitation tolerances.
- b. If applicable the status of injury compensation and disability retirement benefits and future eligibility.
- c. A full explanation of all restoration rights and benefits (see 546.4).
- d. Full particulars regarding the position, including title, duties, grade, salary, location of work assignment, and all other information required in a preemployment interview. (See Handbook P-11, 264.8 and 265.)
- e. Instructions for completion and submission of any required employment forms.

.713 Appeal

a. Those employees who fully recover in less than one year from the date on which OWCP compensation began, may appeal to the Merit Systems Protection Board (MSPB) if they believe a proposed offer of reemployment does not meet the requirements of Office of

Personnel Management regulations 5 CFR Part 353. The letter of appeal must be submitted within 20 days after the date of the offer or 20 days after the date of reemployment, whichever is later.

b. Those employees or former employees whose full recovery extends beyond one year, or whose partial recovery falls either within or beyond one year of compensation, may appeal to the Merit Systems Protection Board only when they have requested restoration through formal application to the installation head and restoration has been refused them. An appeal to the denial of restoration must be filed with MSPB within 20 days from the day the denial letter is received. Upon restoration, however, the employees are not given the right to appeal the nature of the restoration.

.72 Refusal of Reemployment Offer. When a former employee refuses an offer of suitable employment within the OWCP defined medical limitations, the appointing officer must do the following:

- a. Offer the individual an opportunity to sign a declination of employment.
- b. Advise the individual that the effect of such refusal may result in the termination or reduction of compensation benefits by the Department of Labor.
- c. Notify the OWCP district office by telephone of the declination and reasons given.
- d. Within 2 working days, forward a full written summary of the former employee's interview, including the signed declination, and medical evaluations or other pertinent information to the OWCP district office. OWCP has the responsibility to notify the Retirement and Insurance Division, Office of Personnel Management, when disability retirement status is to be evaluated.

.73 Refusal to Reemploy. The appointing official may not be able to accommodate the former employee for medical reasons or other considerations. If the former employee will not be reemployed, the appointing officer must:

- a. Notify the employee in writing of that fact, with a copy to the OWCP; and
- b. Include a paragraph informing the individual of the right to appeal to the Merit Systems Protection Board.

.74 Processing Personnel Actions. The reemployment of former employees injured or disabled on duty requires uniform information on Form 50-B, *Request for Personnel Action (Processing Copy for New Hires Only)*, before forwarding to the Employee and Labor Relations Information Center. (See 612.5 of Handbook P-11.)

547 Return to Duty

547.1 Therapy Obligations

The installation head must ensure that an employee reports for scheduled therapy treatment. The employee

must be advised that failure to keep appointments with a physician or hospital is a form of absenteeism. Control office/control point personnel will report failures to keep appointments to the OWCP district office.

547.2 Medical Reports

.21 Progress reports received from the attending physician may show the employee is capable of some work during convalescence or after medical treatment has been completed.

.22 If not, this information is requested by the control office/control point from the attending physician or the OWCP district office by use of Form CA-17.

.23 If the attending physician submits a medical report, Form CA-17, indicating that the employee is medically capable of performing some of the normal duties for a limited number of hours, or other work of a different nature than the employee's former assignment, the installation head must make every reasonable effort to place the employee in an appropriate assignment.

547.3 Fitness-For-Duty Determination

.31 Determining Fitness. The fact that an injured or ill employee is scheduled for a series of treatments or appointments with a physician or hospital does not, by itself, establish that the employee is not fit-for-duty in the interim. Control personnel will recommend, upon medical justification, to the installation head that any employee being treated by a physician or hospital be required to report to a USPS medical unit (or contract equivalent) for a fitness-for-duty examination. Only an installation head is authorized to approve a fitness-for-duty examination.

.32 Examination Report. This physical examination may include the parts of the anatomy being treated, provided the examination in no way disturbs or interferes with the treatment regimen. The results of this examination will be brought to the attention of the OWCP district office for consideration.

.33 Physician Report Questioned. If the medical officer questions the medical procedures and/or determination of the employee's attending physician, no administrative action may be taken to change the employee's compensation or employment status until the medical issue is settled.

.34 Resolving Determination. The following procedures apply only to fitness-for-duty determinations incident to an on-the-job injury or illness. Fitness-for-duty determinations for other purposes are not covered by this instruction.

a. The physician or hospital must, for each visit of the employee, make a professional statement, using Form CA-17, showing the employee either:

- (1) Fit-for-duty; or
- (2) Fit for limited duty, and the work tolerance limitations due to the injury; or
- (3) Not fit for duty with an expected return-to-duty date.

b. If the physician or hospital is unable to predict an employee's fitness for duty on either a short-term or long-term basis, the control office/control point supervisor may request information from the OWCP by sending Form 2573, Request—OWCP Claim Status, in duplicate, to the OWCP district office. If OWCP does not respond within a maximum of 60 days, or if the OWCP response does not explain the situation, a fitness-for-duty examination may be recommended to the installation head as provided in 547.31, .32, and .33. However, a fitness-for-duty examination can be initiated at any time to determine the duty status of the injured employee.

c. If the results of the fitness-for-duty examination disagree with the findings of the attending physician, the matter, along with justification for the USPS position, is referred by the control office/control point supervisor to the OWCP Deputy Commissioner for resolution.

d. A fitness-for-duty determination is not limited to the employee's regular duties, but should be based on whether the employing installation has any temporary alternative duties available which the employee may safely perform.

HOUSE COMMITTEE REPORT

4/9

(7)

Date referred: 4/7/88

FURTHER REFERRALS: State Affairs

DATE: 4/26/88

The Labor & Commerce Committee has considered SB 61

"An Act relating to rights of injured state employees."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 3/23/88
- zero with analysis

SIGNING DO PASS:

Cliff Perindse

Samuel M. ...

SIGNING OTHER RECOMMENDATIONS:

_____ *Furnace*

_____ *John A. ...*

_____ *Dave ... (no rec.)*

_____ *Dave ...*

Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: "An Act relating to rights of injured state employees." BRU: Personnel
 Sponsor: Szymanski Components: Centralized Administrative Services
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact on the Division of Personnel. Any extra work that may be involved can be absorbed into normal workflow.

Prepared By: *Diana DeSimone* Phone: 465-4430
 Division: Personnel Date: 1-21-88

Approved by Commissioner: John M. Andrews Date: 1/25/88
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 61 (b)
PUBLISH DATE: Senate 3/23/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
Title: " An Act relating to rights of
injured state employees." BRU: Workers' Compensation
Sponsor: Szymanski & Kerttula Components: Workers' Compensation
Requestor: Senate Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Macquelyn McClintock Phone: 465-2790
Division: Workers' Compensation Date: 03/01/88
Approved by Commissioner: Jin Sampson Date: 03/01/88
Agency: Department of Labor

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: "An Act relating to rights of
injured state employees." BRU: Personnel
 Sponsor: Szymanski Components: Centralized Administrative Services
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact on the Division of Personnel. Any extra work that may be involved can be absorbed into normal workflow.

Prepared By: Diana DeSimone Phone: 465-4430
 Division: Personnel Date: 1-21-88

Approved by Commissioner: John M. Andrews Date: 1/25/88
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 61 (b)

PUBLISH DATE: Senate 3/23/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency: Labor
 Title: " An Act relating to rights of BRU: Workers' Compensation
injured state employees."
 Sponsor: Szymanski & Kerttula Components: Workers' Compensation
 Requestor: Senate Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Macquelyn McClintock Phone: 465-2790
 Division: Workers' Compensation Date: 03/01/88
 Approved by Commissioner: Jim Simpson Date: 03/01/88
 Agency: Department of Labor

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HL+C	4-26-88	1:30 p.m.
HSA	5-2-88	4:00 p.m.



Alaska State Legislature

Senator Mike Szymanski

While in Session:
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4978/4979

Interim
3111 C Street
Suite 150
Anchorage, AK 99503
(907) 276-6739

M E M O R A N D U M

To: Representative Dave Donley, Chair
House Labor and Commerce Committee

From: Senator Mike Szymanski

Date: April 7, 1988 *MS*

Subject: Scheduling of Committee hearing for SB 61

165 E. Parks Hwy.
Suite 104
Wasilla, AK 99687
(907) 376-MIKE

I am sponsor of Senate Bill #61, "An Act relating to the rights of injured state workers," which passed the Senate on an 18-0 vote on April 6, and was referred today to two House Committees, Labor and Commerce and State Affairs.

I would therefore like to formally request a hearing be scheduled on this bill for House Labor and Commerce Committee at your earliest convenience.

The bill has a zero fiscal note, but that is only because there will be an unprojectable savings in the bill in lessened disability payments and training time by getting experienced workers back on the job as soon as possible.

I originally submitted the bill as HB 318 in the 14th Legislature; where it went through extensive hearings, passed the House on a 38-0-1-1 voted, and died in the last days of session in Senate Rules in the last-minute logjam. This year, as SB 61, the bill went through 4 Senate Committees with unanimous "Do Passes," and no CS.

There is no opposition to the bill that I am aware of, but rather unanimous support from various state agencies (Division of Personnel, Division of Risk Management, and Division of Worker's Compensation) and APEA.

I think this bill is of great benefit to state workers, at no expense to the public. Any assistance you could give in speeding it's passage would be appreciated.

Senate District E

Mat-Su • So. Anchorage • Bird/Indian • Girdwood • Whittier • Nikiski • Cooper Landing • Hope • Seward • Cordova • Valdez

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: SB 61
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: "An Act relating to rights of
injured state employees."
Sponsor: Szyrianski & Kerttula
Requestor: Senate HESS

Agency Affected: Labor
BRU: Workers' Compensation
Components: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jacquelyn McClintock Phone: 465-2790
Division: Workers' Compensation Date: 02/02/87
Approved by Commissioner: Jim Sampson Date: 02/02/87
Agency: Labor

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 61
Publish Date: _____

REQUEST _____

Revision Date: _____
Title: SB 61

Agency Affected: Administration
BRU: Personnel

Sponsor: Szymanski
Requestor: _____

Components: Centralized Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

There is no fiscal impact on the Division of Personnel. Any extra work that may be involved can be absorbed into normal workflow.

Prepared By: Diana DeSimone *Diana DeSimone* Phone: 465-4430
Division: Personnel Date: 1/22/87

Approved by Commissioner: Garrey Pesko *Garrey Pesko* Date: 1/26/87
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : SB 61
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: " An Act relating to rights of
injured state employees." BRU: Workers' Compensation
 Sponsor: Szymanski & Kerttula Components: Workers' Compensation
 Requestor: Senate Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Maquelyn McClintock Phone: 465-2790
 Division: Workers' Compensation Date: 03/01/88
 Approved by Commissioner: Jim Simpson Date: 03/01/88
 Agency: Department of Labor

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Bill No. Senate Bill 61

Date April 23, 1987

Title "An Act relating to rights of injured state employees."

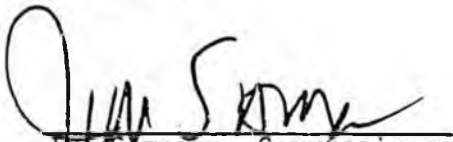
Contact: Jacque McClintock
465-2790

The Department of Labor supports this legislation which provides rehire rights for injured state employees.

Under the provisions of this bill, the state is required to reemploy an injured state employee in the former job position if the employee is medically able to perform the duties of the position or, if not medically able, to rehire the employee in a modified or comparable position. This bill applies to all state employees who have sustained an occupational injury or illness and who wish to return to work for the state.

This bill will afford return to work protection for injured state employees, and should, overall, reduce the state's costs of workers' compensation by returning injured and disabled employees to suitable gainful employment.

APPROVED:


Jim Sampson, Commissioner
Department of Labor

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72

HOUSE STATE AFFAIRS COMMITTEE

NEXT COMMITTEE: FINANCE

BILL: SB 72

CURRENT VERSION: CS SB 72 (SA)

SCHEDULED: _____

SPONSOR: FISCHER

PHONE NO: 3791

CONTACT FILE: _____

BILL SUBJECT: PROHIBITING SALARIES FOR CERTAIN EMPLOYEES FROM EXCEEDING GOVERNOR'S SALARY

SPONSOR BACKUP: _____

AFFECTED AGENCIES:

<u>DEPARTMENT</u>	<u>CONTACT/PHONE</u>	<u>COMMENT</u>
ADMINISTRATION	PUSHPENDER DHILLON/2200	

FISCAL NOTES

<u>AGENCY</u>	<u>REQUESTED</u>	<u>DATED</u>	<u>FY 88 AMT</u>	<u>FY 89 AMT</u>
ADMINISTRATION		1/25/88	-0-	-0-

ACTION

<u>DATE</u>	<u>COMMENT</u>

164

STATE OF ALASKA, 1987 LEGISLATIVE SESSION
FISCAL NOTE (REVISED)

Bill Version: CS SB 72(SA)
Publish Date: _____

REQUEST _____

Revision Date: 1/29/87
Title: An act prohibiting salaries for certain employees from exceeding Gov.'s salary
Sponsor: Fischer
Requestor: Senate State Affairs Committee

Agency Affected: A11
BRU: A11
Components: A11

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	(9.7)	(58.5)	(58.5)	(58.5)	(58.5)	(58.5)
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	(9.7)	(58.5)	(58.5)	(58.5)	(58.5)	(58.5)
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	(9.7)	(58.5)	(58.5)	(58.5)	(58.5)	(58.5)
FEDERAL FUNDS						
OTHER						
TOTAL	(9.7)	(58.5)	(58.5)	(58.5)	(58.5)	(58.5)

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: Attach a separate page if necessary

See continuation.

Prepared By: Diana DeSimone *Diana DeSimone* Phone: 465-4430
Division: Personnel Date: 1/29/87

Approved by Commissioner: Garrey Peska *Garrey Peska* Date: 1/30/87
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

CONTINUATION OF FISCAL NOTE ANALYSIS
FOR SB 72

SB 72 would limit basic salaries of employees to not more than the salary of the Governor. The fiscal note assumes that the effective date will be May 1, 1987. It reflects 17 employees in the Executive Branch who are currently paid more than the Governor's base salary of \$81,648 per year. Five are employed by independent authorities. No assumptions are made for future years, so the amount is shown as a constant savings.

The full year savings are currently distributed as follows:

Department of Law	\$(15.5)
Department of Health and Social Services	(15.3)
Department of Natural Resources	(3.7)
Department of Transportation and Public Facilities	(10.3)
Department of Revenue (Alaska Permanent Fund Corporation)	(12.5)
Department of Commerce and Economic Development (Alaska Power Authority)	(1.2)
	<u>\$(58.5)</u>

Additional savings may be realized if those employees are included who would be earning more than the Governor except for their current reduced work weeks.

We note that there are no employees of the Legislature who would be affected by this bill. The effect on the Court System would not be realized until there are vacancies on the bench due to prohibitions on reducing the salary of judges during their tenure, unless the reduction is applied generally to all employees as provided by Article IV, Section 13, of the Alaska constitution. The salary of the Court Administrator is not protected by this section of the constitution.

We do not have information available to estimate the impact on other entities affected by the bill:

- University of Alaska
- Alaska Railroad
- Other quasi-public corporations that process their own payroll
- Grantees

SAC



P.O. Box 1684
Soldotna, AK 99669
May 8, 1987

Representative Fran Ulmer
House of Representatives
P.O. Box V
Juneau, AK 99811-3100

Dear Representative Ulmer:

I am writing to you to express my opposition to CS for SB 72. I believe it to be poor legislation and detrimental to the State of Alaska.

It is inappropriate to use the Governor's salary as a criterion for other salaries. The following are my reasons:

1. The Governor is an elected official whose job description requires no education, experience, or expertise beyond age and residency.
2. The hired management of a municipality or a school district does require education, experience, and expertise as a part of the job description.
3. Alaskan residents who are able administrators would have to go outside the state to get salaries commensurate with their qualifications. A great loss for our state!
4. The ability to bring the best to Alaska to help solve our complex problems would be severely impaired.
5. Municipalities and school districts are required to "bargain in good faith" with their employees. It appears to me that SB 72 would have long term employees making the same wage as their administrators. What would be the incentive to take on management responsibilities?
6. What would prevent public entities from playing around with benefits and contract services to circumvent the legislation?
7. SB 72 appears to be socialistic punishment to a capitalistic reward. Not what independent Alaskans stand for!

The solution I would recommend for high public employee salaries is as follows: Legislation that would tie salary increases or reductions to actual funding levels. Example: If funding to school districts was cut 10% then no less than 5% should come from across the board salary reductions. (or any other percent that that seems fair.) Appropriate range differences should be in place at the start.

CS for SB 72 is poor public policy. Please do not support it!

*I believe this is
in your State affairs
committee.*

Sincerely,
D. Wilder

Darlene M. Wilder
Board of Education Member and
Board of Central Emergency
Services Member

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An act prohibiting salaries for BRU: Personnel
certain employees from exceeding Governor's
salary.
 Sponsor: Fischer Components: Centralized Administrative Services
 Requestor: Senate State Affairs Committee

FY EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

(Attach a separate page if necessary)

This fiscal note assumes that the effective date will be May 1, 1988. This bill will have no fiscal impact on the budget for the Division of Personnel. The legislation will, however, have a statewide impact. The impact will provide savings of 9.7 in 1988 and 58.5 for each year thereafter through 1993. See attached analysis.

Prepared By: Diana DeSimone *[Signature]* Phone: 465-4430
 Division: Personnel Date: 1-21-88

Approved by Commissioner: John M. Andrews *[Signature]* Date: 1/25/88
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An act prohibiting salaries for BRU: Personnel
certain employees from exceeding Governor's
salary.
 Sponsor: Fischer Components: Centralized Administrative Services
 Requestor: Senate State Affairs Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

This fiscal note assumes that the effective date will be May 1, 1988. This bill will have no fiscal impact on the budget for the Division of Personnel. The legislation will, however, have a statewide impact. The impact will provide savings of 9.7 in 1988 and 58.5 for each year thereafter through 1993. See attached analysis.

Prepared By: Diana DeSimone *[Signature]* Phone: 465-4430
 Division: Personnel Date: 1-21-88

Approved by Commissioner: John M. Andrews *[Signature]* Date: 1/25/88
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE ANALYSIS
FOR SB 72

SB 72 would limit basic salaries of employees to not more than the salary of the Governor. The fiscal note assumes that the effective date will be May 1, 1987. It reflects 17 employees in the Executive Branch who are currently paid more than the Governor's base salary of \$81,648 per year. Five are employed by independent authorities. No assumptions are made for future years, so the amount is shown as a constant savings.

The full year savings are currently distributed as follows:

Department of Law	\$(15.5)
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Department of Natural Resources	(3.7)
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Department of Revenue (Alaska Permanent Fund Corporation)	(12.5)
Department of Commerce and Economic Development (Alaska Power Authority)	<u>(1.2)</u>
	<u>\$(58.5)</u>

Additional savings may be realized if those employees are included who would be earning more than the Governor except for their current reduced work weeks.

We note that there are no employees of the Legislature who would be affected by this bill. The effect on the Court System would not be realized until there are vacancies on the bench due to prohibitions on reducing the salary of judges during their tenure, unless the reduction is applied generally to all employees as provided by Article IV, Section 13, of the Alaska constitution. The salary of the Court Administrator is not protected by this section of the constitution.

We do not have information available to estimate the impact on other entities affected by the bill:

- University of Alaska
- Alaska Railroad
- Other quasi-public corporations that process their own payroll
- Grantees

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HOUSE STATE AFFAIRS COMMITTEE

NEXT COMMITTEE: JUDICIARY

BILL: SB 85

CURRENT VERSION: CS SB 85 (SA)

SCHEDULED: W 4, 1988

SPONSOR: ABOOD

PHONE NO: 4522

CONTACT FILE: _____

BILL SUBJECT: POWER AND DUTIES OF THE ALASKA PUBLIC OFFICES COMMISSION

SPONSOR BACKUP: IN FILES AND BLACK BINDERS

AFFECTED AGENCIES:

<u>DEPARTMENT</u>	<u>CONTACT/PHONE</u>	<u>COMMENT</u>
ADMIN	PUSHPENDER DHILLON/2200	
APOC	CARLA FORSYTHE/276-4176	OFF-NET TELECONFERENCE

FISCAL NOTES

<u>AGENCY</u>	<u>REQUESTED</u>	<u>DATED</u>	<u>FY 88 AMT</u>	<u>FY 89 AMT</u>
ADMIN/APOC		3/10/88	-0-	\$19,500
PREPARED BY (S) STATE AFFAIRS		3/10/88	-0-	-0-

ACTION

<u>DATE</u>	<u>COMMENT</u>
5/2/88	RESCHEDULED TO MAY 4
5/4/88	HCS ADOPTED AND PASSED FROM COMMITTEE

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/12/88

FURTHER REFERRALS:

Judiciary
Finance

DATE: 5-4-88

The State Affairs Committee has considered CSSB 85(SA)
CS FOR SENATE BILL NO. 85 (State Affairs)

"An Act relating to the power and duties of the Alaska Public Offices Commission; and providing for an effective date."

RECOMMENDS:

- replace with HCS (S SB 85(SA)) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

[Signature]
[Signature]

[Signature]
[Signature]

[Signature]
 Chairman's signature

Original sponsor: Abood

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
 2 HOUSE CS FOR CS FOR SENATE BILL NO. 85 (State Affairs)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 FIFTEENTH LEGISLATURE - SECOND SESSION
 5 A BILL

6 For an Act entitled: "An Act relating to the power and duties of the
 7 Alaska Public Offices Commission; and providing for
 8 an effective date."

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

10 * Section 1. AS 44.21 is amended by adding new sections to read:

11 ARTICLE 9. ALASKA PUBLIC OFFICES COMMISSION.

12 Sec. 44.21.450. ALASKA PUBLIC OFFICES COMMISSION. (a) There
 13 created in the Department of Administration the Alaska Public Offices
 14 Commission consisting of five members. The governor shall appoint a
 15 members of the commission in the manner prescribed in (b) and (c)
 16 this section, subject to confirmation by a majority of the legislature
 17 in joint session.

18 (b) The governor shall appoint two members of each of the two
 19 political parties whose candidate for governor received the highest
 20 number of votes in the most recent preceding general election at which
 21 a governor was elected. The two appointees from each of these two
 22 parties shall be chosen from a list of four names to be submitted to
 23 the central committee of each party.

24 (c) The four members selected under (b) of this section shall
 25 by a majority vote, nominate to the governor an individual to serve as
 26 the fifth member of the commission. The governor shall either appoint
 27 the nominee to the commission, or shall reject the nominee and require
 28 the commission to nominate another individual to serve as the fifth
 29 member of the commission.

(d) The term of office for each member of the commission is five years and until a successor is appointed and qualifies. If a vacancy occurs before the expiration of a member's term, the member appointed to fill the vacancy serves for a full five-year term. A commission member may not serve more than one term.

(e) A member of the commission, during tenure, may not

(1) hold or campaign for elective office;

(2) be an officer of a political party, political committee, or political group;

(3) permit the commissioner's name to be used, or make any contributions whatsoever, in support of or in opposition to a candidate or proposition or question that appears on any ballot in the state including that of a municipality; however, contributions may be made to a candidate for the office of President of the United States;

(4) participate in an election campaign or participate in or contribute to a political party; or

(5) lobby or employ or assist a lobbyist.

(f) Members of the commission are entitled to receive compensation of \$50 a day while attending commission meetings and are entitled to travel expenses and per diem authorized by law under AS 39.20.180.

(g) The members of the commission shall elect a chairman. A majority of the commission constitutes a quorum. The affirmative vote of at least three members is required to take official action. A vacancy does not impair the power of the remaining members to exercise the powers of the commission.

(h) The commission may employ an executive director and other employees it considers necessary. The executive director and an employee of the commission may not, during tenure,

1 (1) serve as a member of the commission;

2 (2) engage in an activity described in (e) of this section
3 except as necessary to carry out the purposes of AS 44.21.450 - 44.-
4 21.500.

5 (i) The commission shall establish a central office and shall
6 establish or designate a commission office in each election district
7 of the state for the filing and public inspection of the reports,
8 registrations, or statements required to be filed with the commission.
9 Only one commission office may be established or designated in a
10 municipality that contains more than one election district. A dis-
11 trict office designated under this subsection may be a municipal or
12 other public office.

13 (j) The forms and material required for compliance with AS 15.13
14 shall be made available in each commission office to candidates,
15 persons, and groups required to file reports under AS 15.13.

16 (k) The commission shall promptly forward a copy of each report
17 filed by a statewide candidate to each district office, and it shall
18 promptly forward a copy of each report filed by a legislative candi-
19 date to the district office in the election district where the candi-
20 date is seeking office.

21 (l) The commission shall ensure that copies of each report filed
22 by a candidate for municipal office are made available for public
23 inspection in the municipality in which the candidate is seeking
24 office.

25 Sec. 44.21.455. DUTIES OF THE COMMISSION. The commission shall

26 (1) develop and provide forms for the reports, registra-
27 tions, and statements required under AS 15.13, AS 24.45, and AS 39.50;

28 (2) prepare and publish a manual setting out uniform meth-
29 ods of bookkeeping and reporting for use by persons required to make
30

reports, registrations, and statements under AS 15.13 and otherwise assist candidates, groups, and individuals in complying with AS 15.13;

(3) receive and hold open for public inspection reports, registrations, and statements required to be filed under AS 15.13 and, upon request, furnish copies to an interested person at cost;

(4) compile and maintain a current list of each report, registration, and statement filed with the commission;

(5) prepare a summary of each report, registration, or statement filed under AS 15.13 and make a copy of the summary available to an interested person at cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing a report or statement required under AS 15.13;

(7) report to the office of the attorney general within 60 days after each election the names of all persons and groups who have failed to comply with a provision of AS 15.13;

(8) examine, investigate, and compare reports, statements, and actions required by AS 15.13, AS 24.45, and AS 39.50 and report to the attorney general the names of all persons or groups the commission has substantial reason to believe have violated AS 15.13, AS 24.45, or AS 39.50;

(9) prepare and publish an annual report to the legislature concerning the activities of the commission; the effectiveness of AS 15.13, AS 24.45, AS 39.50, and AS 44.21.450 - 44.21.500; their enforcement by the attorney general's office; and recommendations and proposals for change; and

(10) adopt regulations necessary to implement and clarify the provisions of and that are consistent with AS 15.13, AS 24.45, and AS 39.50, subject to the provisions of the Administrative Procedure

Act (AS 44.62).

Sec. 44.21.460. PRELIMINARY INVESTIGATIONS. (a) The commission shall investigate a violation of AS 15.13, AS 24.45, or AS 39.50 upon receiving a signed and sworn complaint from any person. Upon receipt of a properly signed and sworn complaint, the executive director shall immediately acknowledge receipt of the complaint to the complainant and to each person against whom the complaint was filed.

(b) The executive director shall, within 10 working days after receiving the complaint under (a) of this section, provide an initial response to the complaint stating that the commission will

(1) investigate the allegations of the complaint;

(2) require additional time to evaluate the complaint to determine whether it should be investigated and providing an appropriate explanation for the delay;

(3) refer the complaint to another agency;

(4) take no action because the commission does not have jurisdiction to investigate the complaint; or

(5) take no action because the allegations of the complaint do not warrant further action by the commission for reasons stated in the response.

(c) The executive director may conduct a preliminary investigation of a violation of AS 15.13, AS 24.45, or AS 39.50 that comes to the attention of the executive director in the normal course of business. The executive director shall immediately notify a person against whom the investigation is proceeding of the nature of the alleged violation.

(d) A person whose name is mentioned in a complaint or identified during an investigation or at a hearing being conducted by the commission and who may have violated a provision of AS 15.13,

AS 24.45, or AS 39.50 shall be advised by the executive director of the information obtained by the commission. A person advised under this subsection may appear personally at the hearing and testify or may file a signed and sworn written statement of facts or other evidence for the record.

(e) If, after a preliminary investigation under (a) or (c) of this section, the commission determines that there is probable cause to believe that the person named in the complaint has committed a violation of AS 15.13, AS 24.45, or AS 39.50, the commission shall commence violation proceedings by filing and serving an accusation on the person alleged to have committed the violation. The commission shall serve the accusation in the manner prescribed by court rules for serving a complaint in a civil action.

(f) If the commission terminates an investigation without filing an accusation, the commission shall, immediately after terminating the investigation, inform the complainant and each person against whom the complaint was filed of the information reviewed and that the commission will not be taking further action concerning the complaint.

Sec. 44.21.465. HEARINGS. (a) A hearing shall be conducted if a respondent requests a hearing on a contested accusation or under AS 44.21.475. In the absence of a request, the commission in its discretion may decide to hold a hearing. A hearing under this section shall be conducted under AS 44.62.330 - 44.62.630 and shall be open to the public.

(b) When a hearing officer submits a proposed decision to the commission under AS 44.62.500, the respondent and commission staff may, within 10 working days after receipt of a copy of the proposed decision, submit written comments on the proposed decision to the commission. Before adopting the proposed decision the commission

1 shall consider the written comments.

2 Sec. 44.21.470. IMPOSITION OF PENALTY. (a) The commission may
3 impose the penalty provided by law for the violation only if the
4 respondent, having been advised of the right to a hearing, admits or
5 pleads no contest to the allegations contained in the accusation, or
6 if the commission

7 (1) holds a hearing at which the respondent is afforded the
8 right to appear, with or without counsel, the right to present wit-
9 nesses or other evidence, and the right to cross examine witnesses;
10 and

11 (2) following the hearing, determines by substantial evi-
12 dence that the respondent has committed the violation of which the
13 respondent was accused.

14 (b) Except when there is no evidence of a wilful violation, the
15 executive director of the commission may not formally or informally
16 make a recommendation to the commission as to a particular penalty in
17 a pending matter or make a commitment to the respondent to make a
18 particular recommendation to the commission in the future until after
19 the respondent has admitted or pleaded no contest to the accusation or
20 until after a hearing and a final determination by the commission that
21 the respondent has committed the acts charged in the accusation.

22 (c) Before the executive director of the commission may make a
23 recommendation to the commission for the imposition of a particular
24 penalty in a matter, the respondent shall be given notice of the
25 recommendation and afforded an opportunity to respond to the recom-
26 mendation in person or in writing.

27 (d) In imposing a penalty, the commission shall consider

28 (1) the seriousness of the violation in terms of the extent
29 to which the violation has impeded public disclosure of information

required to be filed with the commission as to the amount and source of contributions; and

(2) the extent to which the respondent's conduct, including prior violations of AS 15.13, AS 24.45, or AS 39.50 shows a continuing disregard for the law.

Sec. 44.21.475. SUMMARY DISPOSITION OF VIOLATIONS. (a) Notwithstanding the provisions of AS 44.21.465 - 44.21.470, the commission may establish by regulation the violations described in AS 15.13, AS 24.45, or AS 39.50 that are amenable to summary disposition without formal accusation.

(b) If the commission discovers that a person has committed a violation that is amenable to summary disposition, the commission may, in lieu of serving an accusation on the person, mail a notice of fine to the person indicating the circumstances of the violation and the amount of the fine. The person to whom the notice is directed may pay the fine within 30 days after receiving the notice, file a notice of defense disputing the facts and requesting a hearing under AS 44.21.-465, or file an affidavit stating facts in mitigation of the amount of the fine.

(c) If the person does not properly respond under (b) of this section, the notice of fine constitutes an accusation and the commission shall proceed against the person under AS 44.21.465 - 44.21.470.

(d) If the person files an affidavit stating facts in mitigation of the amount of the fine under (b) of this section, the commission shall hold a hearing limited to the amount of the fine. A hearing under this subsection shall be held in accordance with procedures adopted by regulation of the commission and is not subject to AS 44.-62.330 - 44.62.630.

Sec. 44.21.480. CONFIDENTIALITY. (a) A complaint, the

commission proceedings related to the complaint, and the records and information obtained by the commission during a preliminary investigation are confidential until a determination of no probable cause has been made by the commission and the investigation is terminated, or a determination of probable cause has been made and an accusation is filed or a notice of fine is mailed under AS 44.21.475, unless the person alleged to be in violation requests in writing that the proceedings be public.

(b) A person, including a member or employee of the commission, may not disclose a matter made confidential under (a) of this section unless a court orders the disclosure or the disclosure is authorized under AS 44.21.460 - 44.21.500.

(c) A knowing violation of the provisions of this section is a class A misdemeanor.

Sec. 44.21.485. JUDICIAL REVIEW. Judicial review of a final order of the commission may be had by filing a notice of appeal under applicable rules of court governing appeals from administrative agencies.

Sec. 44.21.490. COMPELLING TESTIMONY; EXAMINATION OF RECORDS.

(a) In connection with an investigation or hearing involving a violation of AS 15.13, AS 24.45, or AS 39.50, the commission may compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and may have the depositions of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the powers and duties assigned to the commission by law.

(b) The commission may examine the papers, books, records, accounts and documents of a person subject to AS 15.13, AS 24.45, or AS 39.50 to determine the correctness of a report filed with the

commission or in conjunction with an investigation or inspection conducted under (a) of this section.

(c) Subpoenas may be issued and shall be served in the manner prescribed by AS 44.62.430 and court rule. The failure, refusal, or neglect to obey a subpoena is punishable as contempt in the manner prescribed by law or court rule. The superior court may compel obedience to the commission's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

Sec 44.21.500. DEFINITION. In AS 44.21.450 - 44.21.500 "commission" means the Alaska Public Offices Commission.

* Sec. 2. AS 24.45.021(a) is amended to read:

(a) This chapter shall be administered by the Alaska Public Offices Commission established [CREATED] under AS 44.21.450 [AS 15.-13.020(a)].

* Sec. 3. AS 24.45.091 is amended to read:

Sec. 24.45.091. PUBLICATION OF REPORTS. Copies of the statements and reports filed under this chapter shall be made available to the public at the commission's central office, the office of the lieutenant governor, the legislative reference library of the Legislative Affairs Agency, and at the commission's district offices [PRESCRIBED IN AS 15.13.020(j)] as soon as practicable after each reporting period.

* Sec. 4. AS 39.50.050(a) is amended to read:

(a) The Alaska Public Offices Commission established [CREATED] under AS 44.21.450 [AS 15.13.020(a)] shall administer the provisions of this chapter. The commission shall prepare and keep available for distribution, standardized forms on which the reports required by this chapter shall be filed.

* Sec. 5. AS 39.50.200(a)(3) is amended to read:

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

commission proceedings related to the complaint, and the records and information obtained by the commission during a preliminary investigation are confidential until a determination of no probable cause has been made by the commission and the investigation is terminated, or a determination of probable cause has been made and an accusation is filed or a notice of fine is mailed under AS 44.21.475, unless the person alleged to be in violation requests in writing that the proceedings be public.

(b) A person, including a member or employee of the commission, may not disclose a matter made confidential under (a) of this section unless a court orders the disclosure or the disclosure is authorized under AS 44.21.460 - 44.21.500.

(c) A knowing violation of the provisions of this section is a class A misdemeanor.

Sec. 44.21.485. JUDICIAL REVIEW. Judicial review of a final order of the commission may be had by filing a notice of appeal under applicable rules of court governing appeals from administrative agencies.

Sec. 44.21.490. COMPELLING TESTIMONY; EXAMINATION OF RECORDS.

(a) In connection with an investigation or hearing involving a violation of AS 15.13, AS 24.45, or AS 39.50, the commission may compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and may have the depositions of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the powers and duties assigned to the commission by law.

(b) The commission may examine the papers, books, records, accounts and documents of a person subject to AS 15.13, AS 24.45, or

commission or in conjunction with an investigation or inspection conducted under (a) of this section.

(c) Subpoenas may be issued and shall be served in the manner prescribed by AS 44.62.430 and court rule. The failure, refusal, or neglect to obey a subpoena is punishable as contempt in the manner prescribed by law or court rule. The superior court may compel obedience to the commission's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

Sec 44.21.500. DEFINITION. In AS 44.21.450 - 44.21.500 "commission" means the Alaska Public Offices Commission.

* Sec. 2. AS 24.45.021(a) is amended to read:

(a) This chapter shall be administered by the Alaska Public Offices Commission established [CREATED] under AS 44.21.450 [AS 15.-13.020(a)].

* Sec. 3. AS 24.45.091 is amended to read:

Sec. 24.45.091. PUBLICATION OF REPORTS. Copies of the statements and reports filed under this chapter shall be made available to the public at the commission's central office, the office of the lieutenant governor, the legislative reference library of the Legislative Affairs Agency, and at the commission's district offices [PRESCRIBED IN AS 15.13.020(j)] as soon as practicable after each reporting period.

* Sec. 4. AS 39.50.050(a) is amended to read:

(a) The Alaska Public Offices Commission established [CREATED] under AS 44.21.450 [AS 15.13.020(a)] shall administer the provisions of this chapter. The commission shall prepare and keep available for distribution, standardized forms on which the reports required by this chapter shall be filed.

* Sec. 5. AS 39.50.200(a)(2) is amended to read:

(3) "commission" means the Alaska Public Offices Commission established [CREATED] under AS 44.21.450 [AS 15.13.020(a)];

* Sec. 6. AS 39.50.200(b) is repealed and reenacted to read:

(b) In this chapter "state commission or board" means the

(1) Agricultural Revolving Loan Fund Board (created administratively to assist in administration of AS 03.10);

(2) Alaska Coastal Policy Council members and their alternates (AS 44.19.155);

(3) Alaska Commercial Fisheries Entry Commission (AS 16.-43.020);

(4) Alaska Commission on Postsecondary Education (AS 14.-42.015);

(5) Alaska Energy Center (AS 46.12);

(6) Alaska Housing Finance Corporation (AS 18.56.010 - 18.56.210);

(7) Alaska Judicial Council (art. IV, sec. 8, Alaska Constitution);

(8) Alaska Medical Facility Authority (AS 18.26.010 - 18.26.900);

(9) Alaska Municipal Bond Bank Authority (AS 44.85.020);

(10) Alaska Oil and Gas Conservation Commission (AS 31.05.-005 - 31.05.170);

(11) Alaska Power Authority public directors (AS 44.83.030);

(12) Alaska Public Broadcasting Commission (AS 44.21.256);

(13) Alaska Public Offices Commission, including the executive director and professional staff of the commission (AS 44.21.450);

(14) Alaska Public Utilities Commission (AS 42.05.010);

(15) Alaska Resources Corporation (AS 37.12.010);

(16) Alaska Petroleum Oil and Gas Development Authority

(AS 38.06.020);

- (17) Alaska Seafood Marketing Institute (AS 16.57.010);
- (18) Alaska State Building Authority (AS 18.55.020);
- (19) Alaska State Council on the Arts (AS 44.27.040);
- (20) Alaska Teachers' Retirement Board (AS 14.25.035);
- (21) Alcoholic Beverage Control Board (AS 04.06.010);
- (22) Board of Education (AS 14.07.075);
- (23) Board of Fisheries (AS 16.05.221(a));
- (24) Board of Game (AS 16.05.221(b));
- (25) Board of Parole (AS 33.16.020);
- (26) Board of Trustees and executive director of the Alaska Permanent Fund Corporation (AS 37.13.040);
- (27) Commission on Judicial Conduct (art. IV, sec. 10, Alaska Constitution);
- (28) Council on Domestic Violence and Sexual Assault (AS 18.66.010);
- (29) Employment Security Advisory Council (AS 23.20.025);
- (30) Fishermen's Fund Advisory and Appeals Council (AS 23.-35.010);
- (31) Governor's Commission on the Administration of Justice (AS 44.19.110);
- (32) Guide Board (AS 08.54.010);
- (33) Local Boundary Commission (AS 44.47.265);
- (34) Occupational Safety and Health Review Board (AS 18.60.-057);
- (35) Public Employees' Retirement Board (AS 39.35.020);
- (36) State Assessment Review Board (AS 43.56.040);
- (37) State Commission for Human Rights (AS 13.80.010);
- (38) State Personnel Board (AS 20.05.110);

1 (39) University of Alaska Board of Regents (AS 14.40.120);

2 (40) Workers' Compensation Board (AS 23.30.005).

3 * Sec. 7. AS 15.13.020, 15.13.030, 15.13.045, and 15.13.120(d) are
4 repealed.

5 * Sec. 8. Alaska Public Office Commission members serving on the effec-
6 tive date of this Act continue to serve out their terms as provided under
7 AS 15.13.020, repealed in sec. 7 of this Act. Vacancies occurring on or
8 after the effective date of this Act shall be filled in accordance with
9 AS 44.21.450 as enacted in sec. 1 of this Act.

10 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).
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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HSA

5-3-88

3:00p.m.

Alaska State Legislature

INTERIM OFFICE
3111 'C' STREET, SUITE 535
ANCHORAGE, ALASKA 99503
(907) 561-7614

Senator Mitch Abood
CHAIRMAN

IN SESSION
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4714

Senate Committee on State Affairs

MEMORANDUM

TO: Representative Fran Ulmer, Chair
House Committee on State Affairs

FROM: Senator Mitch Abood, Chairman *MZA*
Senate Committee on State Affairs

DATE: May 4, 1988

SUBJECT: Comments on APOC amendments to CSSB 85 (SA)

1. No comment.

2. APOC's explanation of this provision is incorrect and very misleading. Subsection (d) pertains only to those infrequent cases when an individual who is not a respondent and who is not a party to any APOC action is identified by APOC as a potential violator of the law.

It provides that a person whose name is mentioned in a complaint or identified during an investigation or at a hearing as someone who may have violated the law, shall be notified by the executive director, so that the person is able to file a signed and sworn written statement of the facts or other evidence so that the commission can develop a full and fair record.

If the matter is not resolved and goes to a hearing, the person may appear and testify at the hearing. This provision was modeled after similar provisions in Florida, Nebraska and Hawaii. Although the narrative provided by the APOC states that it is modeled after Florida's provision it leaves out the critical fact that Florida's hearings (as well as the other states) are kept closed and confidential while those in SB 85 are open to the public.

The point being -- than an individual whose conduct is seen to rise to the level of possibly violating the law during proceedings which are confidential and hidden from public view, should be given the opportunity to incorporate his or her side of the story into the record, before being blind-sided by possibly damaging, defamatory and inaccurate staff accusations in a public hearing. This is precisely what has happened to people in the past and is the reason why the subsection was put in the bill.

If you will review the memo from the Senate Advisory Council you'll see that the states who have this provision on the books use it very infrequently and have no problems administering the provision. And although APOC staff thinks that people will destroy evidence, no other state had experienced this, but have experienced exactly the opposite -- with people providing documentation so that they can clear their name.

3. I strongly oppose the APOC amendment to the confidentiality section and would like to refer you to page 8 of the sectional analysis for a more detailed and comprehensive narrative on the provision.

APOC staff has opposed the provision because they think that complainants will leak information to the press. If you'll review the Senate Advisory Council memorandum you will see that states which have the same provision in SB 85 which makes a breach of confidentiality a crime, do not have a problem with leaks.

It must also be remembered that in the past, the APOC staff themselves were responsible for leaking information to the press.

Enclosures: Senate Advisory Council memo
CSSB 85 (SA) sectional analysis & narrative

Alaska State Legislature

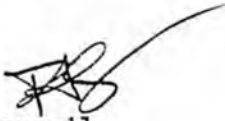
Senate Advisory Council



P.O. Box V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

TO: Senator Mitch Abood
Alaska State Senate

ATTN: Carol Horos

FROM: Paula d. Scavera 
Senate Advisory Council

DATE: April 19, 1988

SUBJECT: Campaign Violations IR # 88-003273

Per your request are the answers from the attached questions provided by your office. I have grouped the answers by state. As soon as I have received answers from the Federal Election Commission I will forward those answers to you.

FLORIDA

The General Counsel to the Department of State handles campaign violations in the State of Florida.

All complaints, proceedings, hearings and investigations are confidential until when a complaint is made public information at the time of a finding or at the time it is ruled "not probable cause". Usually a press release is issued by the Department of State.

The number of "leaks" of confidential information regarding complaints/investigations has dropped considerably due to provisions in Florida law which provide for the filing of criminal complaints against the responsible parties.

The State of Florida also has a provision that a criminal complaint is filed against a person if he or she files a complaint with false allegations or without merit. This provision seems to have drastically reduced the number of malicious complaints and "has cleaned up campaigns".

Senator Abood
April 19, 1988
Page 2

The State of Florida very rarely uses the provision in which a person is notified when he or she is mentioned during a proceeding, so that they may appear. What usually happens is that if a person is involved in someone else's case, then a complaint is filed against the second person, to insure that everyone is treated fairly and with all confidential rights contained within Florida laws.

Also as soon as a complaint appears to be criminal in nature rather than civil, the matter is turned over to the State Attorney's Office for action.

SOUTH CAROLINA

The South Carolina Ethics Commission handles specific complaints against public officials for campaign violations. The Ethics Commission meets every other month to handle complaints and cases. A complaint/cases along with all proceedings and hearings are confidential. If a complaint/case is leaked the Commission and their employees do not confirm or deny that an investigation is taking place. If a complaint/case is dismissed, all mention of the complaint is stricken from public record. If a complaint/case is upheld, the commission notifies the person and the press of the findings.

Informal disposition of complaints are usually between more than one party and based upon an agreement between the two parties. For instance, Candidate A may say something derogatory about Candidate B, so then Candidate B says something even more derogatory about Candidate A, so then this escalates until one candidate files a complaint with the Ethics Commission and the other candidate counter-files a complaint. This is when an informal disposition may come into play, with an agreement worked out between the two parties with the Ethics Commission.

The Ethics Attorney I talked to in South Carolina liked the Florida provision, specifically that criminal complaints be filed against parties responsible for leaks.

NEBRASKA

In the State of Nebraska, complaints are held confidential unless the respondent makes the information public or until a finding. They "very rarely" have a leak to the press about any of their investigations, and they don't know of any destruction of evidence.

When a finding of no probable cause is found, the records are kept confidential unless the respondent wants them made public information.

They also thought the Florida provision for prosecuting someone who discloses confidential information on complaints/cases was a good provision.

Senator Abood
April 19, 1988
Page 3

Nebraska never uses the provision to notify people whose name are mentioned and who might adversely affected. They, like Florida, when a second person is named in a case, will initiate the complaint process on the second person so that proper procedures are followed.

HAWAII

The Campaign Spending Commission is the entity that handles complaints in the State of Hawaii. This state has problems with cases being held confidential, but they do not have any specific sanctions against someone "leaking any information".

This state has no problem with any one providing documentation. "When we have documentation that says someone did something, nobody is going to destroy any information that shows that they didn't do it". "People want to clear their name".

One problem that Hawaii complained about, is that even if a case is found "no probable cause, no further investigation" the outcome is still confidential. Because of this, the Commission feels they are accused of "whitewashing" a lot of cases. The Spending Commission has for the last few years worked to change this section of the law in the Hawaii Legislature, but to no avail.

They also liked the Florida provision.

If you need additional assistance, please contact me.

FEDERAL ELECTIONS COMMISSION

1. Sec. 118.8 (reg) - provides for a 5 day interval for the initial processing of complaints.

Do they have any problems administering this provision?

Do they experience many situations when 5 days is insufficient for an initial determination? How do they handle it?

2. Sec. 111.21 - provides that complaints, notification by the commission, commission investigations and commission findings are confidential unless the respondent gives written permission to make them public.

Any problems with enforcement? In particular, do they experience cases where the complainant leaks the complaint to the press? How do they handle notifying the parties of the confidentiality provision?

If the commission determines that there is no probable cause and closes the file; is it kept confidential or is the file open to the public?

If the case goes to a hearing, is the hearing confidential or open to the public?

3. Sec. 111.18 - Conciliation agreements. Do they use conciliation agreements in cases where there is evidence of a willful, flagrant violation of the law?

What criteria do they use to employ conciliation instead of allowing a case to go to a hearing?

4. How do they handle cases when an individual who is not a party to an action, but whose name is mentioned during the investigation and the evidence raises that possibility that the individual may have violated the law. Do they notify that person and give them an opportunity to respond or offer evidence before a public accusation is made?

SOUTH CAROLINA

1. Sec. 52-3.7 - How long does it generally take to make the initial determination from the facts presented in the complaint if there is sufficient cause to investigate . Do they feel that 10 working days a reasonable timeframe to make this determination and to notify the parties?

1. Sec 52-3.9 - South C. keeps the complaint as well as the entire proceedings and hearing confidential.

Enforcement OK? Do they experience problems with complainants leaking complaints to the press?

They also have a provision for malicious filing of complaints. Do they use this provision often? How is enforcement?

Sec. 52-3.13 - Informal disposition of complaints. In cases where there is evidence of a flagrant, willful violation do they still dispose informally or send to a hearing?

HAWAII

1. Sec. 11-216 - complaints, investigations and hearings are confidential in Hawaii.

Any enforcement problems? What about complainant leaking complaint to press?

2. They also have the provision (Sec. 11-216(c)(2)) in which they notify any person whose name is mentioned during a proceeding and who may be adversely affected, so that the person may appear before the commission or submit written comments. Enforcement OK?

Is this a procedure that is used frequently or infrequently?

When do they actually notify someone? During the investigation/ whenever the evidence suggests that the person may be adversely affected ?

Have they ever had people destroy evidence when they're notified? Would they say that this provision has a "chilling effect" on their investigation?

Does the provision assist in developing a full and fair record?

3. If the commission does not find that there is probable cause to proceed against the person, the file is closed and kept confidential. Does this cause them any problems?

NEBRASKA

1. Is the complaint confidential? Do they have any problems with the confidentiality provision? Complainant leaking to press, etc.?

2. They also have the provision to notify people whose names are mentioned and who may be adversely affected.

(Pls. ask same questions on this as Hawaii)

3. If they find no probable cause to proceed against a person, the records are kept confidential. Any problem with this?

FLORIDA

1. Complaints et al are confidential. Enforcement OK? Complainant leaks to press?

2. They also have a provision which prohibits knowingly filing complaints with false allegations or without merit. Has this provision cut down on the malicious filing of complaints as a campaign strategy? Enforcement ok?

3. They have the notification if name is mentioned and if adversely affected - same as Hawaii and Nebraska.

Alaska State Legislature

INTERIM OFFICE
3111 'C' STREET, SUITE 535
ANCHORAGE, ALASKA 99503
(907) 561-7614

WHILE IN SESSION
PO BOX V
JUNEAU, ALASKA 99811
(907) 465-4747

Senator Mitch Abood
SENATE DISTRICT G-A

CHAIRMAN
STATE AFFAIRS
MAJORITY WHIP
MEMBER
TRANSPORTATION
COMMITTEE ON COMMITTEES
LEGISLATIVE COUNCIL
INTERNATIONAL TRADE

SECTIONAL ANALYSIS AND NARRATIVE

FOR

CSSB 85 (SA), "An Act relating to the powers and duties of the Alaska Public Offices Commission, and providing for an effective date."

Index of Sections

44.21.450	Alaska Public Offices Commission
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44.21.465	Hearings
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44.21.475	Summary Disposition of Violations
44.21.480	Confidentiality
44.21.485	Judicial Review
44.21.490	Compelling Testimony; Examination of Records
44.21.495	Judicial Review
44.21.500	Definition Several conforming amendments Immediate effective date

** Section 44.21.450. ALASKA PUBLIC OFFICES COMMISSION.

This section corrects a serious constitutional problem with the manner in which the commission chooses its fifth member. Article II, Section 26 of the Alaska Constitution requires all members of regulatory or quasi-judicial boards or commissions to be appointed by the Governor and confirmed by the legislature. However, since the commission was established in 1974, the four members have

chosen the commission's fifth member themselves, without appointment by the Governor or confirmation by the legislature. This section sets out a procedure for the appointment and confirmation of the fifth member; the selection of successors; and deletes obsolete material relating to the initial terms of members.

Subsection (h) is a new provision 1/ which holds commission staff to the same standard as commission members by prohibiting staff from engaging in political activity while they are employed by the APOC.

** Section 44.21.455. DUTIES OF THE COMMISSION.

This section is identical to present law, AS 15.13.030, which describes the responsibilities of the commission to administer AS 15.13 (campaign disclosure), AS 24.45 (lobbying) and AS 39.50 (conflict of interest).

** Section 44.21.460. PRELIMINARY INVESTIGATIONS.

Existing statutes governing APOC investigations are hopelessly confused and raise serious questions about the lack of constitutional due process afforded individuals who are subjected to APOC staff investigations.

Subsection (a) is similar to present regulation 2 AAC 50.450 (c)(1), which sets out a procedure for handling complaints which are properly filed and sworn. However, this subsection sets out a new requirement for the executive director to notify each person against whom a complaint is filed. The present APOC regulation only requires staff to acknowledge receipt of a complaint to the complainant but not to the respondent. Subsection (a) also sets out a new requirement that both parties be notified immediately.

1/ The use of language such as "new provision" or "new requirement" means that similar language does not exist in present law.

Subsection (b) adds a new requirement for the executive director to make an initial determination whether a complaint sets out facts which, if true, would constitute a violation of the law, within 10 working days after first receiving the complaint, for purposes of notifying the complainant and the respondent.

Present APOC regulation 2 AAC 50.450 (c)(2), simply states that the staff must make this determination "promptly".

Subsection (c) provides that the staff may conduct a preliminary investigation of violations of the campaign disclosure, conflict of interest and lobbying laws on its own motion. Present APOC regulations (2 AAC 50.460 (a)(2), (b) and 2 AAC 50.450 (e)), which describe these procedures are poorly written and extremely confusing.

Subsection (c) also sets out a new requirement for an investigation which the staff begins on its own motion, that requires the executive director to immediately notify a person against whom a preliminary investigation is proceeding of the nature of the alleged violation. Present law and regulation do not require commission staff to notify a person that he or she is under investigation. It has happened in the past that individuals were not aware of the existence of an APOC investigation which involved them until after the staff terminated its investigation and made public charges in a report to the commission which recommended that action be taken against them.

Subsection (d) is a new provision which is modeled after similar provisions in Florida, Nebraska and Hawaii. The subsection provides that a person whose name is mentioned in a complaint or identified during an investigation or at a hearing as someone who may have violated AS 15.13, AS 24.45, or AS 39.50 shall be advised by the executive director of the information obtained by the commission. This person may appear personally and

testify at the hearing or may file a signed and sworn written statement of the facts or other evidence for incorporation into the record.

The intent of this subsection is to ensure that individuals who are identified as possible violators of the law, but who have not been formally made a party to an action, be allowed an opportunity to provide facts or other evidence so that an investigation or hearing can develop a full and fair record. This does not mean that everyone whose name merely comes up in a commission matter will be notified, as the APOC staff fears. It is hoped that professional staff will be able to distinguish between a casual, frivolous or malicious mention and the point at which the evidence raises a serious possibility that an individual may have violated the law.

Commission staff have also pointed to the Florida provision and argued that notification should be restricted to hearings only. While it is true that the Florida provision pertains to hearings, it is also true that the hearings in Florida are kept closed, while those in CSSB 85 (SA) are open to the public. The point being -- that an individual whose conduct is seen to rise to the level of possibly violating the law during proceedings which are confidential and hidden from public view, should be given the opportunity to incorporate his or her side of the story into the record, before being blind-sided by possibly damaging, defamatory and inaccurate staff accusations in a public hearing. This is precisely what has occurred to individuals in the past, and is the reason why the subsection was put in the bill.

*

*

When staff concludes the preliminary investigation and submits their report, the commission deliberates. The purpose of this initial deliberation is to elicit evidence on the question of whether or not the complaint was filed on justifiable grounds.

Subsection (e) is a new provision and provides that when a preliminary investigation is ended and the commission makes a determination that there is probable

cause to believe that the person named in the complaint has committed a violation of AS 15.13 (campaign disclosure), AS 24.45 (conflict of interest) or AS 39.50 (lobbying), the commission will then commence violation proceedings by filing and serving an accusation on the person who is alleged to have committed the violation.

Subsection (f) is a new requirement which provides that if a preliminary investigation is terminated and the commission finds that no probable cause exists that the person named in the complaint has committed a violation, the commission shall immediately inform the complainant and each person against whom the complaint was filed, of the information which was reviewed and that the commission will not be taking further action concerning the complaint. The commission will then close the file.

** Section 44.21.465. HEARINGS.

There is very little existing law governing the actual administrative procedures that the commission must follow in adjudicating violations and imposing penalties. In the absence of statutory provisions, the commission has filled the void with a large number of its own administrative regulations.

It is much better policy to include basic procedures in the law, rather than leaving such important matters to questionable regulations and staff interpretation.

Subsection (a) is new and provides that a hearing shall be conducted if a respondent requests a hearing on a contested accusation or under the conditions described in the "Summary Disposition of Violations". In the absence of a request, the commission in its discretion may decide to hold a hearing. The hearing shall be conducted under the provisions of the Administrative Procedures Act and will be open to the public.

Subsection (b) is a new requirement that when a

hearing officer submits a proposed decision to the commission, the respondent and the commission staff may, within 10 working days after receipt of a copy of the proposed decision, submit written comments on the proposed decision to the commission. This is to allow an opportunity for both sides to comment on the hearing officer's proposed decision. The commission is required to consider these written statements before adopting the hearing officer's decision.

*** Section 44.21.480 IMPOSITION OF PENALTY

This entire section contains new provisions and has no counterpart in existing law.

Subsection (a) provides that the commission may impose penalties only after a person has admitted or plead no contest to an accusation or after the commission holds a hearing at which certain due process rights have been afforded to the respondent, and at which the commission determines by substantial evidence that the person has actually committed the violation. Existing law does not address standards of proof in hearings before the commission.

Subsection (b) provides that in cases where there is evidence of a willful violation (emphasis added) of the law, the commission staff may not formally or informally make a recommendation to the commission members as to a particular penalty in a pending matter or make a commitment to the respondent to make a particular recommendation to the commission in the future until after the respondent has admitted or pleaded no contest to the accusation or until after a hearing and a final determination by the commission that the respondent has actually committed the acts charged in the accusation. This ban on plea bargaining by staff is restricted to instances where there is evidence of a flagrant, willful violation and does not in any way impair staff's ability to negotiate settlements in other cases.

Subsection (c) states that before the executive director may make a recommendation to the commission for the imposition of a particular penalty in a matter, the respondent must first be given notice of the recommendation and afforded an opportunity to respond to the recommendation in person or in writing.

Subsection (d) contains specific guidelines for the commission to follow in imposing penalties. This subsection provides that the higher penalties should be reserved for egregious conduct where the violation has impeded public disclosure of information as to the amount and source of contributions; and the extent to which the respondent's conduct, including prior violations of AS 15.13, AS 24.50, or AS 39.50 shows a disregard for the law.

The intent of this section is for the legislature to provide clear guidelines to the commission in exercising its discretionary "sentencing" authority, so that the law is the determining factor in the commission's imposition of penalties and not the staff's interpretation; It is also intended to provide some standards for judicial review of commission actions.

*** Section 44.21.485. SUMMARY DISPOSITION OF VIOLATIONS

This section authorizes the commission to establish by regulation the less serious violations that are amenable to summary disposition without formal accusation. This category of violations makes up the vast majority of the commission's business and involves such transgressions as inadvertent mistakes and the late filing of reports.

The intent of this section is to permit the commission to continue to deal with relatively minor violations in a summary fashion, without having to employ the more detailed procedures of the Administrative Procedures Act. The concept of the "summary disposition of violations" by means of a schedule of fines, is modeled after the "mail-in-bail" provisions of the Motor Vehicle Code (AS 28).

Subsection (b) states that a notice of fine may be mailed to the person who is alleged to have committed a summary violation which indicates the circumstance of the violation and the amount of the fine. The person may then pay the fine within 30 days after receiving the notice, file a notice of defense disputing the facts and requesting a hearing, or file an affidavit stating facts in mitigation of the amount of the fine.

Subsection (c) provides that if a person does not properly respond under the requirements of the section, that the notice of fine constitutes an accusation and the commission shall proceed against the person under AS 44.21.465 - 44.21.470.

Subsection (d) provides that if the person files an affidavit stating facts in mitigation of the fine, the members of the commission shall hold a hearing limited to the amount of the fine. This is not an APA-type of hearing and does not require a hearing officer.

*** Section 44.21.490. CONFIDENTIALITY

This entire section contains new provisions and has no counterpart in existing law.

Most states, including the Federal Elections Commission provide for confidentiality. In drafting the confidentiality provision for CSSB 85, we reviewed the following states: South Carolina; Hawaii; Minnesota; Nebraska; Illinois; Florida; Kansas; Washington; Massachusetts and California.

In CSSB 85, the complaint, the commission proceedings related to the complaint, and the records and information obtained by the commission during a preliminary investigation are confidential until a determination of probable cause has been made by the commission and an accusation is filed under 44.21.465, unless the person alleged to be in violation requests in writing that the proceedings be public.

If the commission finds that there is no probable cause to believe an individual has committed an offense, the parties are notified, the file is closed and the matter remains confidential. This is the same procedure used by the Ombudsman.

It is no secret that complaints have been filed as a campaign strategy to inflict maximum damage upon an opponent. It is also no secret that prejudicial material has been leaked to the press by commission staff in order to bolster their "case" in front of the commission, with no regard for whether the information is true or false.

Whatever its source, this practice denies an individual his or her constitutional rights to privacy and due process and destroys any expectation to be treated fairly under the law. A person who is targeted for staff investigation should not be blind-sided by the dissemination of prejudicial and defamatory material before the commission even makes a determination that there is probable cause to proceed.

Sensational press accounts which are purposely timed to appear before commission decisions, make a mockery out of the common law doctrine of the "deliberative process privilege" which is intended to protect from public disclosure those pre-decisional documents that reflect the decision-making authority of an agency.

The rationale for the privilege was discussed in Ryan v. Department of Justice, 617 F. 2d 781 (D.C. Cir. 1980), in which the court stated:

The [privilege] was created to protect the deliberative process of the government, by ensuring that persons in an advisory role would be able to express their opinions freely to agency decision-makers without fear of publicity. In the course of its day-to-day activities, an agency often needs to rely on the opinions and recommendations of temporary consultants, as well as its own employees. Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit the frank discussions of policy matters and likely impair the quality of decisions.

The United States Supreme Court has emphasized that documents that are protected by the privilege remain privileged even after a final decision is reached in the matter, unless ideas expressed in the document(s) are incorporated in the final decision. The rationale for this is that "disclosure at any time could inhibit the free flow of advice, including analysis, reports, and expression of

opinion within the agency." Federal Open Market Committee of the Federal Reserve System v. Merrill, 443 U.S. 340, 360 (1979). 2/

Commentators Stone and Liebman discuss this privilege, as recognized by the federal courts, in part as follows:

...a document is protected if its disclosure would reveal "the methods by which a decision is reached, the matters considered, the contributing influences, or the role played by the work of others."

The ultimate purpose of the privilege is "to prevent injury to the quality of agency decisions." Its particular purposes are (1) to encourage open, frank discussions on policy matters between subordinates and their superiors by assuaging fear of public ridicule or criticism; (2) to protect against premature disclosure of proposed policies before they have been finally formulated or adopted; and (3) to protect against confusing the issues and misleading the public by disclosure of reasons that were not in fact the actual reasons for the agency's actions.

....The scope of the privilege is not so narrowly confined, however, it has been held to extend to "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinion of the writer rather than the policy of the agency."

2/ Index for Inspection or Discovery of Public Records, Dept. of Law, 1986.

S. Stone & R. Liebman, Testimonial Privileges (1983).

I think it is important not only to review the provisions of the confidentiality section in terms of the deliberative process privilege, but to weigh those provisions with the constitutional right to privacy in Alaska, which exceeds even that of the federal standard. According to a 1984 Attorney General's Opinion (1984 Inf. Op. Att'y Gen. Oct. 366-625-84):

"Regarding the (constitutional) right to privacy, first it must be determined whether the information is of the type that would be protected under Article I, Section. 22 of the Alaska Constitution, which provides that:

The right of the people to privacy is recognized and shall not be infringed.

In this regard, the issue is whether the information is "sensitive"; that is, information

. . . which a person desires to keep private and which, if disseminated, would tend to cause substantial concern, anxiety or embarrassment to a reasonable person.

Falcon v. Alaska Public Offices Commission, 570 P.2d 469, 479 (Alaska 1977). If the information is not "sensitive" it is not protected by the right to privacy.

If it is determined that the information is "sensitive", and thus protected by the constitutional amendment, then the second step in the analysis must be taken. This step involves a balancing process, in which the nature and extent of the harm to the individual that would be caused by public disclosure is balanced against the public interest furthered by disclosing the information."

At the Supreme Court's direction after the Falcon decision, the Public Offices Commission in 1978, adopted 2 AAC 50.100, a regulation which specifies the procedures to be

used when a person claims that information is exempt from disclosure under the right of privacy. The regulation reads in part:

(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 APOC narrowly restricted the application of this regulation to AS 39.50 (Conflict of Interest), in instances when a candidate for public office claims that disclosure of information to the commission, as required by statute, would violate someone's right to privacy. However, I think that it can be reasonably argued that the Falcon test which prompted this APOC regulation, is broader than APOC's interpretation and also extends to certain documents such as complaints, reports or other sensitive material obtained or produced prior to the hearing stage under 15.13, 24.45 and 35.50. These matters fall within the confidentiality provision contained in CSSB 85 (SA).

**

**

As far as the actual procedures specified in CSSB 85 for the handling of complaints on through the hearing phase, I would like to briefly discuss similar procedures used by South Carolina, which, like CSSB 85 (SA) allows the executive director to determine from the facts presented in a complaint if sufficient cause exists to conduct a preliminary investigation of the alleged violation or failure to file required statements. If it is determined that facts are not sufficient to constitute a violation, the complaint will be dismissed and all parties will be notified. If the executive director determines that facts are sufficient to constitute a violation, a preliminary investigation will be conducted by the staff.

When the preliminary investigation is terminated, the executive director reports the results of the preliminary investigation to the Commission for review, to determine if probable cause exists to support an alleged violation. If the commission determines that there is insufficient cause to support the violation, all parties will be notified, the complaint will be dismissed and the matter will remain confidential. When sufficient facts do exist to support the alleged violation, the commission shall file an accusation. It is the probable cause determination made by the commission, resulting in the filing of an accusation which ends the confidentiality and makes the matter public.

*** Section 44.21.495. JUDICIAL REVIEW

This section has no counterpart in existing law and is modeled after a similar section in the Administrative Procedures Act.

*** Section 44.21.500. POWERS OF THE COMMISSION

This section is, apart from minor editing, identical to existing AS 15.13.045, and provides the commission with the power to compel witnesses, issue subpoenas, etc. with respect to an investigation or hearings.

*** Section 6 (13)

A new provision that requires the executive director and the professional staff of the commission to submit conflict of interest reports under AS 39.50.200 (b).

*** Several conforming amendments follow.

*** Immediate effective date.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176

Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

May 4, 1988

Rep. Frances Ulmer
Chair, House State Affairs Committee
P.O. Box V
Juneau, Alaska 99811

Dear Rep. Ulmer:

Committee staff asked me to provide any language changes suggested by the Alaska Public Offices Commission to CSSB 85, which is scheduled for hearing before the committee today. The following changes are suggested:

- ✓ 1. Page 5, paragraph (b). Current language imposes a strict 10-day deadline for staff to determine whether facts alleged in a complaint constitute a violation of the law. The commission views this deadline as unworkable for staff. The committee could substitute the following language modeled on Regulation 18360 (e) of the California Fair Political Practices Commission:

* * * *

(b) The initial response to a complaint shall be made in writing to the complainant within 10 days by the Executive Director on behalf of the Commission and shall state that the Commission:

(1) will investigate the allegations of the complaint;
or

(2) will require additional time to evaluate the complaint to determine whether an investigation should ensue and provide an appropriate explanation for the delay; or

(3) will refer the complaint to another agency; or

(4) will take no action on the complaint because the Commission has no jurisdiction to investigate the complaint;
or

(5) will take no action on the complaint because the allegations of the complaint do not warrant further action the Commission for the reasons stated in the response.

* * * *

Although the commission has not specifically approved this language, I believe the commission would find it acceptable.

2. Page 5, Paragraph (d). It is the understanding of the commission that there is a concern that persons whose names have been identified during past commission proceedings have not always had the opportunity to rebut statements made about them. Rather than addressing this concern by requiring staff to notify all persons mentioned in an investigation and then giving them an automatic right to appear at the hearing, the committee could delete paragraph (b), and insert the following language at page 6, after line 15. This language is modeled on Florida's campaign financing law, and was drafted by legislative counsel at Senator Josephson's request:

* * * *

(b) A person who is required to appear at a hearing may, before or during the hearing, submit a sworn written statement for incorporation into the record if the person agrees to answer questions from the hearing officer or commission regarding the statement. A person who is identified during hearing and who, in the opinion of the hearing officer or the commission, may be adversely affected by the hearing shall be notified and may appear and testify or file a sworn written statement or other evidence for incorporation into the record if the person agrees to answer questions from the hearing officer or commission regarding the statement or evidence.

(c) Upon request the hearing officer or the commission may permit a person to appear and testify at a hearing or file a sworn written statement or other evidence for incorporation into the record of a hearing if the person agrees to answer questions from the hearing officer or commission regarding the statement or evidence. This subsection does not limit the subpoena power of the commission.

* * * *

Although the commission has not specifically approved this language, again, I believe the commission would find it workable.

middle ground?

3. Page 8, at line 20. Current language would prohibit acknowledgment by staff that a complaint has been filed with the commission, would provide for confidentiality during the investigation, and would also prohibit disclosure of the reasons why a complaint was dismissed unless the respondent authorized disclosure. The commission is on record as supporting a less restrictive provision. Language favored by the commission would permit acknowledgment of the fact that a complaint and response had been filed, and would then require confidentiality of the investigation until the commission decided whether or not complaint would proceed to further hearing. The approach recognizes the public's right to know which complaints have been dismissed and the reasons why.

The commission is on the record as supporting confidentiality language in SB 241, the Governor's campaign finance reform bill, currently in Senate State Affairs Committee. However, in a subsequent teleconferenced meeting, the commission authorized the following changes, which would be substituted for the current language:

* * * *

An investigation by the commission is confidential. A complaint filed with the commission is a public record. A written response to a complaint is available for public inspection if authorized by the respondent. All other documentary material, written or verbal information, and testimony of witnesses which is produced, obtained, recorded or compiled during an investigation by the commission may not be disclosed to anyone other than a commission member, an employee of the commission for use in the investigation, the attorney general, or the person or who produced the material or gave the testimony until such time as

- (1) an accusation is filed under AS 44.62,
- (2) the commission, by majority vote, closes an investigation without filing an accusation under AS 44.62; or
- (3) the superior court, for good cause shown, orders the information disclosed.

Violation of this section constitutes an abuse of public office under AS 11.56.

* * * *

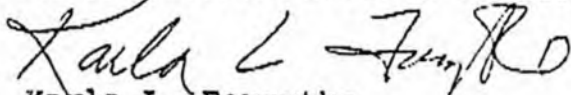
The commission, by its most recent vote of 3-2, favors this specific language, which is a less restrictive proposal than the provision in CSSB 85. However, at least one member supports the language in CSSB 85.

May 4, 1988
Page 4

I hope these suggestions are helpful. I will be prepared to testify in greater detail about the rationale for these suggestions, as well as the basis for the commission's fiscal note on this measure.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karla L. Forsythe
Executive Director

cc: APOC Members
Senator Abood
Jane Barcott, Assistant Director
Brooke Miles, Juneau Coordinator

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

- 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176
- Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

April 14, 1988

Dear Legislators:

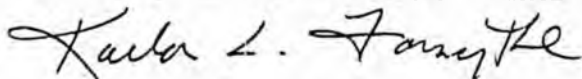
On behalf of the Alaska Public Offices Commission, I would like to extend an invitation to each of you to attend a public work session on current APOC regulations, which is scheduled for Friday, April 22, from 9:00-11:00 A.M. in the Department of Administration conference room, 10th floor, State Office Building. The session is being held as part of the commission's annual meeting, which will be taking place at the same location on April 21 and 22.

As noted in the attached flyer, the commission is interested in hearing comments about regulations which impact you. As an example, 2 AAC 50.015, a regulation under which the commission has required disclosure of gifts of travel to public officials, has been a source of discussion this past week in the Legislative Ethics Committee. The commission would be glad to devote a portion of the time allocated for the public work session to listening to concerns about the regulation and how it has been applied. Campaign disclosure regulations may also be an area of interest to those of you seeking reelection.

A complete copy of APOC regulations is available by calling Brooke Miles in the Juneau APOC office, at 465-4864. Please contact either Ms. Miles or myself if you have any general questions about the agenda for the commission's annual meeting, the public work session, or commission operations.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karla L. Forsythe
Executive Director

cc: APOC Members
Jane Barcott, Assistant Director
Brooke Miles, Juneau office



PUBLIC WORK SESSION: APOC REGULATIONS

The Alaska Public Offices Commission will be meeting in Juneau on April 21 and 22. In addition to its regularly scheduled agenda, the commission will be holding a public work session on Friday, April 22, from 9:00 AM - 11:00 AM in the Department of Administration conference room, 10th floor, State Office Building. The purpose of the session is to listen to your suggestions for changes to current APOC regulations in the areas of campaign disclosure, conflict of interest and lobbying. The commission would like to hear your ideas for ways to improve regulations you find confusing or which cause problems as well as your general comments.

This is not a question-and-answer session, but a chance for people who must comply with the regulations to make the commission aware of the practical impact of regulations currently on the books.

All Alaskans in southeast who are subject to APOC regulations are invited to participate. Since we need to have a general idea of how many people will be speaking to the commission, please call Brooke Miles at 465-4864 and let her know you plan to attend. For persons located outside of Juneau, the work session may be teleconferenced. Please call Brooke Miles for teleconferencing arrangements.

ALASKA PUBLIC OFFICES COMMISSION
Karla Forsythe, Executive Director
2221 E. Northern Lights, Rm 128
Anchorage, AK 99508 (907) 276-4176

Brooke Miles, Juneau Office
P.O. Box CO, Juneau, AK 99811
(907) 465-4864

Alaska State Legislature

INTERIM OFFICE
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843

IN SESSION
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4714



Senator Mitch Aboud
CHAIRMAN

Senate Committee on State Affairs

August 14, 1987

Representative Fran Ulmer, Chair
House Committee on State Affairs
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

This letter is to follow up our recent telephone conversation regarding legislation on the Alaska Public Offices Commission and campaign disclosure. I think it might be helpful to briefly restate some of my observations and ideas.

The Public Offices Commission presently administers three disclosure laws: Conflict of Interest, AS 15.13; Regulation of Lobbying, AS 24.45; and Campaign Disclosure, AS 15.13.

In February of 1985, the Senate State Affairs Committee engaged the law firm of Gross and Burke to review some of the fundamental policies underlying the operation of the Public Offices Commission and the laws relating to campaign disclosure. After numerous public hearings and extensive meetings with members of the APOC staff and the attorney general's office, Senate Bill 356 was introduced by the committee in January of 1986. The Senate State Affairs Committee devoted substantial committee time to hearings and work sessions on the bill, as did the Senate C & RA and Finance Committees. The bill was amended throughout the committee hearing process; the Senate adopted further amendments when the bill reached the floor. Because it was late in the session when the Senate passed the bill to the House, there was too little time for the House to give the bill sufficient attention before adjournment, and the bill died when the Fourteenth Legislature adjourned sine die.

The provisions of Senate Bill 85, which was introduced last session, reflect most closely the provisions of last year's bill in the final version which passed the Senate and which was sent to the House in the closing days of the 1986 session.

SB 85 is a comprehensive revision of two substantive issues:

* The operation and duties of the Alaska Public Offices Commission and its employees, and the manner in which the commission administers the regulations of lobbying, campaign disclosure and conflict of interest laws and;

* A major rewrite of the laws on campaign disclosure. More specifically, we concluded that the existing laws which have been virtually unchanged since 1974, left a number of major policy issues unanswered. These gaps in the law are presently filled by a plethora of regulations adopted by the APOC, but to the extent that they concern major policy matters, we believed they should be resolved by the legislature rather than an administrative agency. In addition, we found that a number of issues were not addressed either in the law or in regulations -- for example, using surplus campaign funds as personal income, soliciting contributions from public employees, and fundraising by incumbents to pay off past campaign debts.

It became apparent last session that extensive amounts of committee time were being devoted to SB 85, but the sheer weight of these two substantive issues folded into one Senate bill slowed the committee process. Added to this were a number of other equally substantive issues with which the committee had to face, and which were wrapped into a 120-day session.

In April of 1987, I proposed to the members of my committee, that these two issues be divided into two separate committee bills. The committee agreed and set out this task as an interim project.

Which brings me to why I called you the other day.

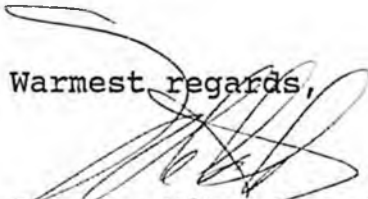
I'd like to offer you a proposal which I believe would allow both our State Affairs Committees to take the initiative on matters relating to campaign disclosure and the Public Offices Commission. I think that we can work in concert with one another to achieve fair and equitable legislation.

I propose that SB 85 be divided into two separate bills as outlined above and that the Senate State Affairs Committee assume responsibility for matters relating to the operation and duties of the Alaska Public Offices Commission, while the House State Affairs Committee assumes responsibility for matters relating to campaign disclosure. I believe that Senate Bill 85 is the best possible vehicle to use as a foundation for this legislation. No other committee bill has had as much public input as the bill which is now SB 85. It is also a great credit to the skills of Av Gross and Susan Burke who originally crafted and polished this legislation.

I think that a division of the responsibilities between our two committees will 'take the politics' out of the subject matter and allow both houses to work jointly for the benefit of the public. It is my fervent hope that we can establish a communications network and a sharing of information between us so that our State Affairs Committees spearhead the effort for election reform.

I am enclosing a copy of SB 85 with the materials relating to campaign disclosure highlighted in blue. Thank you for your consideration of my proposal, if you have any questions or if I can be of any assistance please don't hesitate to call on me.

Warmest regards,



Senator Mitch Abood
Chairman

Alaska State Legislature

INTERIM OFFICE
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843

WHILE IN SESSION
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4747



CHAIRMAN
STATE AFFAIRS
MEMBER
BUDGET & AUDIT
TRANSPORTATION

Senator Mitch Abood
SENATE DISTRICT G-A

SECTIONAL ANALYSIS OF SB 85

Article 1. ALASKA PUBLIC OFFICES COMMISSION

Section 15.14.101. APPLICABILITY. (Source: SB 356) This section is almost identical to existing AS 15.13.010. The only change from existing law is to specify the statute under which the Department of Community & Regional Affairs population certification will be made for the purpose of identifying those municipalities with populations of more than 1,000 to which the chapter applies. We have eliminated the existing AS 15.13.011, which exempts presidential primary elections from the provisions of the chapter, since the law providing for a presidential primary in Alaska has been repealed.

Section 15.14.020. ALASKA PUBLIC OFFICES COMMISSION. (Source: SB 356) This section is, in substance, the same as the AS 15.13.020. However, the original Act only provides for the initial appointment of commissioners; it contains no procedure for the appointment of successors.

AS 15.14.020 (d) establishes such procedures consistent with that used for initial appointments and establishes a period of 30 days after a vacancy within which the appointment must be made.

AS 15.14.020 (g) increases the amount of compensation received by the APOC commissioners. Presently, commissioners receive \$50 per diem, an amount which has remained the same since 1974, when the commission was established.

AS 15.14.020 (i) is a subsection which prohibits employees of the commission from engaging in political activity or in lobbying. This prohibition is identical to AS 15.14.020 (f), which applies to members of the commission.

Section 15.14.030. DUTIES OF THE COMMISSION.

(Source: SB 356) This section is identical to the present 15.13.030, which spells out the responsibilities of the APOC.

Article 2. REGISTRATION AND REPORTS

Section 15.14.040. REGISTRATION BY CANDIDATES

(Source: SB 356) This section establishes a point certain when an individual becomes a candidate for the purpose of filing the reports required by the law. A candidate must register with the APOC within 10 days after either accepting contributions from others of more than \$1,000 or the date when the individual files for elective office. There is no similar provision in present law; AS 15.13.100 does provide, however, that an individual may not make expenditures other than for travel or polls prior to filing for elective office.

It can be certainly argued that if a candidate never actually files for office, reports of contributions and expenditures which invade rights of privacy need never be filed since in such cases, the voters need no information since they never vote on the individual's candidacy. At the same time, it is a fact of political life that most campaigning -- certainly in the case of statewide office -- occurs prior to filing. If voters are to evaluate that campaign as it occurs, it will certainly assist them if they have disclosures as to the source of contributions. This section provides that once contributions are solicited from others, registration should occur and reports should be filed if necessary.

AS 15.14.040 (b) requires a candidate to designate the elective office and the year of the election for which the campaign will be conducted.

Section 15.14.050. REGISTRATION BY POLITICAL ACTION COMMITTEES

(Source: SB 356) AS 15.14.050 (a) is nearly identical to the present AS 15.13.050. It requires PAC's to register with the APOC within 10 days after the PAC accepts contributions of more than \$1,000 or when the PAC makes an expenditure in support of or in opposition to the election of an individual to public office, or in support of or in opposition to a ballot proposition or question.

AS 15.14.050 (b) requires PAC's which are exclusively formed to support or oppose ballot propositions or initiatives to register within 30 days after the PAC files a petition with the Lieutenant Governor or with the municipal

clerk, thus commencing the initiative or referendum process, regardless of whether contributions are solicited or expenditures made.

AS 15.14.050 (d) prohibits A PAC from using or filing a name with the APOC that is the same or materially similar to the name of a PAC whose registration is already on file with the APOC.

AS 15.14.050 (e). If A PAC intends to support or oppose one candidate or to contribute to or expend more than 50 percent of its funds for a candidate, the PAC is required to use the name of the candidate as a part of the name of the PAC.

AS 15.14.050 (f) clarifies that a PAC which contributes or expends funds with the authorization or consent of the candidate, is controlled by the candidate.

Section 15.14.060. REPORTS BY CANDIDATES OF CONTRIBUTIONS, LOANS AND EXPENDITURES. (Source: SB 356) This section describes the information which must be included in contribution reports and establishes the dates at which those reports must be filed. Presently, these requirements are set out in AS 15.13.110 and AS 15.13.040.

AS 15.14.060 (a) requires full reporting of all contributions, loans or expenditures including contributions or loans made by the candidate to his or her own campaign.

AS 15.14.060 (b) sets out the schedule of reporting. Reports must be filed 30 days before an election and seven days before an election. The 10-day report filed after the election, which is required under present law has been eliminated. There is little to be gained by filing the 10-day report, since AS 15.14.190 requires that campaign books be closed as of the date a candidate is sworn into office and the same information contained in the 10-day report would be included in the final report.

AS 15.14.060 (c) deals with the special reports required for contributions, loans or expenditures of more than \$250 which occur within the last 10 days of an election. This subsection requires a report to be filed within 24 hours after a contribution or loan is received or an expenditure is made.

Section 15.14.070. REPORTS BY POLITICAL ACTION COMMITTEES OF CONTRIBUTIONS AND EXPENDITURES.

(Source: SB 356) Requires PAC's to file a report for each contribution of more than \$250 in the aggregate received from an individual. Present law requires a report to be filed for contributions of more than \$100 in the aggregate. PAC's must also provide full information on all

expenditures, including independent expenditures.

AS 15.14.070 (c) and (d) set out a timeline for filing all reports, which is identical to the timeline set for candidates.

Section 15.14.080. STATEMENT BY PERSON MAKING CONTRIBUTION OR EXPENDITURE. (Source: SB 356) This section requires persons to file a report when a contribution of more than \$250 in the aggregate in goods, services, or money to a candidate or PAC is made, or when an independent expenditure which has a value of more than \$250 in the aggregate is made. A form must be filed within 10 days after the contribution or expenditure is made.

AS 15.14.080 (c) provides that the report must include a certification by the person making the statement that the contribution or expenditure has not been furnished by another person or political action committee.

Section 15.14.090. INDEPENDENT EXPENDITURE. (Source: SB 356) This section defines an independent expenditure as one that is made without arrangement, coordination, or direction with or by the candidate or the agent of the candidate before the expenditure is made.

Clarifies that an expenditure is not made independently if it is made by or in consultation with a person who, within one year of the expenditure, was authorized by the candidate or by a campaign officer to raise or expend funds on behalf of the candidate; who has been an officer of a campaign committee of the candidate; or who has been receiving any form of compensation or reimbursement from the candidate or from campaign funds for professional services that require the exercise of discretion or judgement relating to the conduct of the campaign.

Section 15.14.100. CERTIFICATION OF REPORTS (Source: SB 356) Present law requires in numerous sections that reports made to the commission be certified. The proposed section states that requirement is applicable to all reports and adds a specific form for the certification.

Article 3. CONTRIBUTIONS AND EXPENDITURES

Section 15.14.110. CONTRIBUTIONS BY A PERSON (Source: SB 356) AS 15.14.110 (b) and (c) prohibit an individual from contributing more than \$1,000 in the aggregate in a calendar year to a candidate or to a PAC.

AS 15.14.110 (d) permits a person to contribute any amount