

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672  
5355 SLAB SB 39 - SB 61

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### HEARING OFFICERS

In November 1984 two half-time hearing officers joined the AREC staff to adjudicate surety fund claims and license actions. The AREC executive director estimates that the hearing officers will complete the backlog of surety fund claims in eight to ten months. Given this estimate, we believe that AREC should re-evaluate its hearing officer position. AREC may only need one half-time hearing officer in FY 86. The other half-time hearing officer might be utilized as a hearing advocate to assist in AREC investigations and hearing preparations.

### FILING FEE

As of October 4, 1984, persons filing surety fund claims must pay a \$250 filing fee. We understand that the filing fee was established to discourage the filing of frivolous claims. Since AREC does not investigate surety fund claims, all claims including those considered frivolous must be adjudicated by a hearing.

We believe that the \$250 filing fee is excessive, if not unnecessary. A \$50 filing fee, as currently charged by small claims court, would be more reasonable. In addition, a filing fee would not be necessary if surety fund claims were included with license complaints. Frivolous claims would be identified during staff investigations of license complaints.

### CLAIM RECOVERY

According to AREC statute 08.88.490, when the Commission pays a surety fund claim, "the Commission shall be subrogated to all of the rights of the claimant to the amount paid and the claimant shall assign all of his right, title, and interest in that portion of the claim to the Commission." Based on this statute provision, AREC has attempted to recover paid claims and hearing costs from the licensees who committed the license violations. However, our review found that AREC recovery attempts have been minimal. We found that AREC has sent only one notice, dated July 31, 1984, to the licensees requesting payment.

As of September 14, 1984, AREC showed the following claim recovery statistics:

<u>Number of Licensees</u>	<u>Total Amount of Claims Paid and Hearing Costs Incurred</u>	<u>Total Amount Recovered From Licensees</u>
33	\$200,680	\$33,597

### CLAIM WARRANTS

During our review, we found two \$10,000 warrants which should have been returned to the State treasury. Both warrants were issued as surety fund claim payments, but the warrants were never forwarded to the claimants. One warrant, issued December 1981, was being held pending the outcome of an appeal made by the respondent. However, the warrant is no longer redeemable because of its age. The other warrant, issued March 1984, was not forwarded to the claimant due to a May 1984 court interpretation which disallowed payment of the claim.

### RECOMMENDATIONS

In the area of surety fund claims, we recommend that AREC:

1. Establish a minimum fund balance for the Real Estate Surety Fund. Surety fees would only be assessed if the fund balance becomes less than the minimum.
2. Combine license action and surety fund claim hearings. AREC should also consider including surety fund claims with license complaints.
3. Reduce the \$250 filing fee to a more reasonable amount, such as \$50. However, if AREC includes surety fund claims with license complaints, the filing fee should be discontinued.
4. Re-evaluate the staff hearing officer position. Given the executive director's estimate of future workload, AREC may only need one half-time hearing officer in FY 86.
5. Proceed to recover paid claims and hearing costs from licensees.
6. Return the two \$10,000 warrants found in Commission files to the State treasury.

## OFFICE AUTOMATION

Office automation is essential for AREC to operate an effective and efficient regulatory agency. Our review found that AREC could improve its current automation as discussed below.

### CURRENT AUTOMATION

Our review found that AREC needs to improve its current office automation. AREC currently utilizes a Wang word processing system. We found that this system is being utilized far beyond its intended capabilities and is supplying only a fraction of the automated support needed by AREC.

In our opinion, AREC could use a computer system, not just the word processing system, to support the following areas:

1. Licensing - For each licensee, AREC needs computer support which will capture and provide access to current and historical data including:
  - a. personal data
  - b. licensing examination results
  - c. initial license date and number
  - d. current license status
  - e. history and dates of status changes
  - f. current employer
  - g. employer history and dates
  - h. current license complaint or surety claim
  - i. history of disciplinary actions
  - j. renewal and expiration dates
  
2. Office Registration - For each real estate office, AREC needs computer support which will capture and provide access to current and historical data including:
  - a. office address/telephone number
  - b. date office registration submitted
  - c. current office status
  - d. type of business/list of partners or corporation officers
  - e. current broker in charge/license number
  - f. history of brokers in charge with dates of employment and dates of termination
  - g. trust account name/number, bank

3. License Complaints and Surety Fund Claims - For each license complaint and surety fund claim, AREC needs computer support which will capture and provide access to current and historical data including:

- a. case number
- b. date initiated
- c. complainant/address/telephone number
- d. respondent/address/telephone number
- e. history of actions taken and dates
- f. next actions to be taken and dates
- g. current case status
- h. history of status changes

If AREC would improve its current automation, we envision a separate field (screen of information) for each licensee. Each field would be accessed by the licensee's license number. In addition, each field would provide other reference numbers such as the license number of the licensee's employing broker, the identification number of the licensee's real estate office, and file numbers of any license complaints or surety fund claims.

By including license numbers and other reference numbers, a computer could manipulate information to produce licensee rosters by real estate office or license type (broker, associate broker, or salesperson). To produce these rosters on the current word processing system, the AREC license examiner must sort information in 23 separate system documents. A recent roster of brokers took 1½ days to compile.

#### IMPROVED AUTOMATION

The Department of Commerce and Economic Development is taking steps to improve the Commission's office automation. The department's computer systems specialist is currently reviewing two alternative systems. These systems include:

1. Wang Office Information System (OIS) 140. This system is primarily a high-powered word processor with limited data processing capabilities.
2. Wang VS System 80. This system is a computer with high-volume, interactive computing capabilities. This system is currently being utilized by the State's Division of Occupational Licensing in Juneau.

Given the information processing needs of AREC, we believe AREC needs a computer system such as the Wang VS System 80, not another word processor. According to the department's computer systems specialist, the department has identified a refurbished VS system 80 which is available for purchase. If purchased,

This computer system could be utilized by AREC and other department operations in Anchorage.

We believe the department's computer systems specialist should also consider replacing the Commission's printer. We found the current daisy-wheel printer to be quite slow in printing licenses and licensee rosters. For example, a recent roster of brokers (approximately 750 names and addresses) took almost four hours to print.

#### RECOMMENDATIONS

In the area of office automation, we recommend that AREC:

1. Replace the current word processing system. Of the two alternative systems being considered for AREC (Wang OIS 140 and Wang VS System 80), the VS system is assumed to adequately support the Commission's information processing needs; a formal needs assessment would confirm its desirability.
2. Consider replacing the current daisy-wheel printer. We believe that AREC operations would benefit by having a higher speed printer.

## INTERNAL MANAGEMENT CONTROL

To increase operational efficiency and effectiveness, the Commission needs to improve its internal management control. Specifically, we found that the Commission needs to establish two essential elements of internal management control as discussed below.

### STANDARD POLICIES AND PROCEDURES

Our review found that the Commission has not established standard policies and operating procedures to give direction to staff decisions, and to set bounds within which such decisions and resulting actions are acceptable to the Commission. According to the AREC executive director, staff currently receive verbal directions from individual commissioners.

If the Commission would establish standard policies and operating procedures, we envision the following advantages for AREC:

1. Staff effort could be economized. It would be unnecessary for the staff to redecide the same issues.
2. Delegation of authority could be facilitated. Staff would be expected to proceed with actions so long as the situations are covered by the policies and procedures.
3. Control could be made easier. Policies and procedures would lead to uniformity of staff actions.

### DELEGATED AUTHORITY

Our review also found that the Commission has not delegated authority to give its staff the right to decide and the power to carry out decisions within the staff's responsibilities. During our review, we witnessed staff frustration as a result of not being given the authority to carry out responsibilities.

If the Commission would formally delegate authority to its staff, we believe that the delegation should be spelled out in writing.

RECOMMENDATIONS

In the area of internal management control, we recommend that AREC:

1. Establish standard policies and operating procedures.
2. Delegate authority in writing to its staff.

## OTHER ISSUES

During our review, we identified other issues which should be addressed by AREC. These issues and our recommendations are provided below.

### CONFIDENTIALITY OF INVESTIGATIVE FILES

The Commission's open investigative files include unsubstantiated allegations of professional misconduct. A recent Attorney General opinion for AREC states that information in the Commission's open investigative files may not be withheld from public inspection. However, a prior Attorney General opinion for the State's Division of Occupational Licensing states that the division's open investigative files may be withheld from public inspection. Since AREC and the Division of Occupational Licensing have similar information in their investigative files, we question the different Attorney General opinions. In our opinion, the subjects of unsubstantiated allegations have a constitutional right not to have the information made public until the AREC investigation is completed and the relevant facts are presented at a public hearing.

#### Recommendation

We recommend that AREC request an explanation from the Attorney General concerning the different opinions given to AREC and the Division of Occupational Licensing. To ensure the confidentiality of open investigative files, we recommend that AREC statutes include a provision that all records of investigation and information obtained by the Commission during an investigation are confidential and may not be made available by the Commission for public inspection.

### TRUST ACCOUNT AUDITS

The AREC executive director estimates that over fifty percent of the complaints filed with the Commission involve improper trust account management. Given this estimate, we question the lack of trust account audits currently being conducted by AREC. As previously mentioned, the AREC auditor has conducted only three audits of broker trust accounts in the last three years. Each of these audits was conducted as part of a complaint investigation.

If AREC could employ an Investigator III to handle complaint investigations, the current AREC auditor could conduct trust account audits on a full-time basis. We envision these audits being conducted as a service to brokers. Any accounting or

procedural deficiencies found and corrective actions needed would be discussed with brokers during exit conferences.

#### Recommendation

If staff resources would be available, we recommend that AREC conduct trust account audits to identify and resolve problems before the problems cause complaints to be filed with the Commission.

#### OPERATIONS MANUAL FOR COMMISSIONERS

AREC commissioners do not have an operations manual which could include:

- current statutes and regulations;
- delegated authority to staff;
- by-laws;
- standard policies and operating procedures;
- case law;
- forms; and
- other information which the commissioners deem appropriate.

#### Recommendation

We recommend that AREC develop an operations manual. This manual would provide excellent orientation material for new commissioners.

#### AREC/ALASKA ASSOCIATION OF REALTORS

We found that both the Alaska Real Estate Commission and the Alaska Association of Realtors (AAR) share the common goal of having effective and efficient regulation of the State's real estate profession. Based on this common goal, we believe that joint AREC/AAR committees could be utilized to study common concerns such as continuing education for licensees and statute/regulation revisions.

#### Recommendation

We recommend that the Alaska Real Estate Commission and the Alaska Association of Realtors form joint committees to study common concerns.

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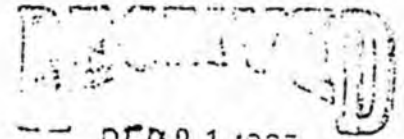
BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

OFFICE OF THE COMMISSIONER

POUCH D  
JUNEAU, ALASKA 99811  
PHONE: 465-2500

December 30, 1985



LEGISLATIVE  
AUDIT

Mr. Gerald L. Wilkerson  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box W  
Juneau, AK 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on your preliminary audit report on the Alaska Real Estate Commission.

Enclosed is the response from the Alaska Real Estate Commission on "A Performance report on the Department of Commerce and Economic Development, Alaska Real Estate Commission, September 19, 1985."

Sincerely,

  
Loren H. Lounsbury  
Commissioner

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Enclosure

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LEGISLATIVE  
AUDIT

STATE OF ALASKA  
MEMORANDUM

To: Loren Lounsbury  
Commissioner  
Dept. of Commerce & Economic Dev.

DATE: December 20, 1985

From: James L. Magowan  
Executive Director  
Alaska Real Estate Commission

Re: Answer to Preliminary Report of the Division of Legislative Audit

The real estate commission has reviewed the preliminary report of the Division of Legislative Audit and submits the following response:

Recommendation No. 1

The commission concurs with this recommendation and has implemented procedures that comply with the recommendations set out in the report. Procedures implementing each of the five points specifically mentioned have been adopted. The procedures now in place are attached (Attachment # 1).

Recommendation No. 2

The commission concurs with this recommendation. The commission has referred several major claims to the attorney general for collection. The commission is also submitting an application for membership in the Anchorage Credit Bureau so that it can be a source of credit information about licensees who have suspended licenses due to non repayment of the fund. The commission is also supporting an increase in the small claims limit to \$5000.

The authority to suspend licenses until the fund is repaid, without an additional hearing became effective October 2, 1984. Counsel advised that this authority applied to claims filed since that time. Commission policy and practice is to suspend the license of any licensee against whom an award is granted until the fund is repaid or satisfactory arrangements for repayment are made. The commission was advised that even with the statutory authority to suspend a license when the fund is not repaid it is necessary to advise the licensee, prior to the hearing, that this may occur. Licensees are now so notified and the order to suspend the license is contained in the final decision, again upon advice of counsel or hearing examiner as to the requirements for "due Process".

Effective recovery of most claims, particularly large ones requires that the commission execute against property or assets of the parties. This requires that the commission have court judgements. The commission feels that

effective recovery will, therefore, require additional assistance and time from the AG. The commission is also seeking statutory authority to execute on orders of payment out of the surety fund as though they were judgements, without further extended court proceedings once an award has been sustained on appeal or the time for appeal has tolled without appeal being filed.

Prior to the "suspension" clause being added to the statute the commission attempted collection in 1983. It sent letters to all licensees advising of the possibility of court action if the fund were not reimbursed. This attempt was largely ineffective due to the commission's inability to actively pursue the claims in court.

#### Recommendation No. 3

The commission concurs with this recommendation. The commission has requested that an attorney be assigned to assist with this on numerous occasions during the past nine years. During 1985 the commission formed a Project Action Committee one of the tasks of the committee was the preparation of recommendations for statutory amendments that the commission could submit for consideration during its "Sunset" review. The commission is submitting the results of this committee's work for consideration by the legislature. The issues specified in the LBA report as well as numerous others are addressed.

The commission concurs with the specific changes recommended in points 1 through 5 in the recommendation.

The commission is using a new renewal system for 1986-87 biennium. Before changing the dates for renewal the commission is going to evaluate the efficiency of this system as well as its cost effectiveness. Recent computer technology may make the current biennium clerically manageable and less costly than going to a Monthly or Birthdate renewal. The commission is not locked into one system over another but does not wish to introduce a new system until it is sure that it will not be introducing additional costs at the same time.

#### Recommendation No. 4

The commission concurs. An additional clerical position is desperately needed at this time.

#### Recommendation No. 5

The commission concurs and a time accounting system is now in effect.

#### Analysis of Public Need

The commission generally concurred with the findings of this section. The commission however notes that managerial and policy changes of the past 18 months have just begun to produce noticeable effects. The rate of complaint closures and license actions has begun to show dramatic increase.

In response to Item III the commission notes that it supported a filing fee of \$50 for a surety claim. The \$250 filing fee was enacted over recommendations from the commission and the industry that a lower fee be

adopted. There have been two known instances where claimants reported that they would need additional time before they could file a claim because they needed to obtain the money to pay the fee. There have been no substantiated instances at this time that a claim with at least face validity was not filed due to the amount of the fee.

The commission is currently reviewing options for the conduct of routine trust account audits including the possibility of developing a self-audit program that will enable the commission to identify problems in a more cost effective manner while at the same time offering the licensees a valuable educational and self help tool.

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## Complaint Investigative Procedures Checklist

### 1. Complaint Receipt: and evaluation

- Day
- [ 1] a. The Complaints Clerk will:
- [ 1] (1) log in the complaint with assignment of a complaint number;
- [ 1] (2) establish a complaint file to include:
- (a) a procedural checklist;
- (b) a contact record sheet;
- [ 1] (3) forward the file to the Investigator.
- [10] (4) send ten-day letters to identified licensees;
- (5) post responses to the file and forward them to the Investigator for evaluation.
- b. The Investigator will:
- [1-3] (1) assign a priority classification;
- [1-3] (2) assign a classification as to type of alleged violation;
- (3) identify the licensees to be contacted for response to the complaint (and any surety claim that accompanies the complaint);
- (4) initiate an investigative report under paragraph 2a.

### 2. Complaint evaluation:

- [1-3] a. The investigative report will include:
- (1) allegation(s) of the complainant;
- (2) violations that appear to be present;
- (3) evidence that supports the allegation(s);
- (4) probable outcome of the complaint;
- [30] b. Ten-day letter responses received. For failure to respond, initiate subpoena procedures in paragraph 8.
- [30] c. The Investigator will evaluate the responses and decide:
- (1) to investigate further, or
- (2) to close:
- (a) complete the investigative report for the file;
- (b) summarize the complaint for:
- 1 the weekly report to the Director;
- 2 the report for the next Commission meeting.

### 3. Investigation:

- [45] a. Write a work plan to detail the work required to complete the investigation and when the work will be accomplished. The work plan will be reviewed by the Executive Director.
- [90] b. Interview witnesses.
- [90] c. Identify needed additional documentation and obtain it.
- d. Record contacts and other work done on the complaint on the contact record sheet inside the complaint folder. The time taken for that particular entry will also be recorded.

4. Hearing:

- [150] a. Complete the Investigative Report.
- [150] b. Draft the accusation or statement of issues for the license action with the investigative report as the basis for this document.
- [150] c. Submit the draft license action and the investigative report, along with necessary evidence, to the Assistant Attorney General for review and critique.
- [150] d. Determine whether a license action will be heard with or without Attorney General participation after consultation with the Director and the Assistant Attorney General. If without, the Investigator and/or the Director will represent the Commission at the hearing.
- [150] e. Prepare the final copy of the license action document.
- [150] f. Serve the license action on the licensee(s) and copy to the Commission:
  - (1) complete the affidavit of service;
  - (2) provide notice of defense.
- [180] (a) If a notice of defense is not filed with the Commission within the specified fifteen days, prepare for an uncontested hearing at the next Commission meeting.
- [180] (b) If a notice of defense is filed, copy the license action, with notice(s) of defense, to the appropriate Hearing Examiner.
- [180] (c) If an entry of appearance is filed at any time by an attorney, copy the complete file to the Assistant Attorney General who may decide to enter the case if not already involved.
- g. Provide required assistance to the Hearing Examiner and/or the Assistant Attorney General to arrange for and conduct the pre-hearing conference and hearing.

5. Commission meeting:

- a. After hearing, copy the proposed decision to all parties, to the Commissioners and to the Lieutenant Governor.
- b. Ensure that the adoption order is signed by the Chairman.

6. Post-meeting:

- a. Copy all parties with the adopted decision by certified mail. Include a reconsideration request form to the licensee if the decision was to suspend or revoke;
- b. Notify each complainant of complaint closure;
- c. Publish the decision results in the licensee's local newspaper thirty days after service of the adopted decision to the licensee (and counsel) if there has been no request for reconsideration granted by the Commission and/or appeal to the Superior Court.

7. Stop Orders:

a. When a stop order is needed, coordinate service with the Commission. The Commission will be given a brief explanation of the need for the subpoena; this will be a written statement so that all members receive the same information. The stop order may be served with approval of a majority of the Commission. Any Commissioner not contacted directly will be informed by telegram.

b. The Investigator will draft the stop order and have the Assistant Attorney General review it for completeness and propriety.

c. The stop order may be served by certified mail or in person by the Investigator. If in person, the Investigator will make sure that the subject(s) understand that it is a definite order from the Commission to stop the identified activity, and that to continue is a violation which could result in a further charge.

d. Following service, the Investigator will complete an affidavit of service.

e. If a notice of defense is filed, a copy of the stop order, with the investigative report of the circumstances, will be provided to the Attorney General's office as soon as possible to comply with the requirement that hearings be scheduled within thirty days.

f. If the subject continues to operate after service of the stop order, the Investigator will notify the Attorney General's office to enforce the order.

8. Subpoenae:

a. When a subpoena is needed, the Investigator will poll the Commission for approval. The Commission will be given a brief explanation of the need for the subpoena; this will be a written statement so that all members receive the same information. A majority of the Commission must approve service. Any Commissioner not contacted directly will be informed by telegram.

b. Service may be by mail or in person. An affidavit of service will be completed.

c. If the recipient of the subpoena does not comply, the Investigator will contact the Attorney General's office to request enforcement. The Investigator will provide any assistance that may be requested by the Assistant Attorney General.

## Complaint Investigative Procedures

### 1. Complaint Receipt:

- a. The Complaints Clerk will, within two days of receipt:
  - (1) log in the complaint with assignment of a complaint number;
  - (2) establish a complaint file to include:
    - (a) a procedural checklist;
    - (b) a contact record sheet;
  - (3) forward the file to the Investigator.
- b. The Investigator will, within one to three days of receipt:
  - (1) assign priority and violation type classifications;
  - (2) list the licensees to be contacted for response to the complaint;
  - (3) initiate an investigative report as described in paragraph 2a.
  - (4) return the file to the Complaints Clerk to send ten-day letters.

c. The Complaints Clerk will send a ten-day letter to all identified licensees. The letter will include a copy of the complaint and copies of supporting documentation which are necessary to understand the complaint and which the licensee would not already have.

d. Respondents to receive ten-day letters for a surety claim will be the same as those for the parallel license complaint.

### 2. Complaint Evaluation:

a. For each complaint, the Investigator will initiate an investigative report. This report will serve as the basis for the decision to close or proceed to hearing. It will include information as to contacts, information sources, information and conclusions. At the start, this report will list the:

- (1) allegation(s) of the complainant;
- (2) violations that appear to be present;
- (3) evidence that supports the allegation(s);
- (4) probable outcome of the complaint.

b. The responses to ten-day letters should be received within thirty days of the complaint filing date. If a respondent fails to respond, a second, certified, notice of complaint will be sent. If the respondent still fails to respond, a subpoena will be served according to procedures in paragraph 5.

c. Upon receipt of the response(s) to the ten-day letter(s), the Investigator will reevaluate the complaint. Following this reevaluation, there will be a decision to close the complaint without action or to investigate further.

d. If the decision is to close, the Investigator will summarize the events of the complaint, without names, and specify the reason for closure. The summary will be included in the weekly report to the Director and in the Investigator's Report to the Commission at the next meeting. The investigative report will be completed with an explanation of the reasons for closure and will be included in the complaint file. The complaint file will then go to the Complaints Clerk for closure letters to be sent to the parties. The complaint is considered closed at this time unless new information or a Commission request cause it to be reopened.

e. An unqualified license applicant will not receive a ten-day letter. The case will go immediately to the statement of issues stage in paragraph 4. An investigative report as specified in paragraph 1c will be initiated.

3. Investigation: With the decision to investigate further, the investigative report draft to date will serve as the basis for the investigation.

a. A work plan will be written by the Investigator which will detail what work remains to be done to complete the investigation and when the various elements of that work will be accomplished.

(1) The work plan is due within forty-five days of the complaint date.

(2) The work plan will be reviewed by the Executive Director.

b. Interview witnesses.

c. Identify needed additional documentation and obtain it.

d. The investigative report will serve as a record of the investigation.

e. Record contacts and other work done on the complaint on the contact record sheet inside the complaint folder. The time taken for that particular entry will also be recorded.

f. The investigation will be completed within ninety days of complaint receipt. By that time, the Investigator will determine whether the complaint should be taken to hearing or closed. The procedures as outlined in paragraph 1f will be used whenever the complaint is to be closed without action.

4. Hearing: the Investigator will:

a. Complete the investigative report.

b. Draft the accusation or statement of issues for the license action. The investigative report will serve as the basis for this document.

c. Submit the draft license action to the Assistant Attorney General for review. The investigative report and supporting evidence will be provided to the Assistant Attorney General at the same time for this review.

d. Determine whether a license action will be heard with or without Attorney General participation after consultation with the Director and the Assistant Attorney General. If without, the Investigator and/or the Director will represent the Commission at the hearing.

e. Prepare the final copy of the license action document.

f. Serve the license action. Service can be in person or by certified mail to the last registered address of the licensee.

(1) Provide notice of defense.

(2) Complete the affidavit of service.

g. Notice of Defense:

(1) If a notice of defense is not filed with the Commission within the specified fifteen days, prepare for an uncontested hearing at the next

Commission meeting as specified in paragraph 4j.

(2) With a notice of defense:

(a) assign the case to a Hearing Examiner;

(b) copy the accusation/statement of issues, with notice(s) of defense, to the Hearing Examiner.

(c) copy the license action, with notice(s) of defense, the investigative report and full documentation, to the Assistant Attorney General if the case is to be heard with Attorney General participation.

(3) The Assistant Attorney General will be informed of each instance where an attorney files an entry of appearance and will have the option to enter any case where the Commission staff had previously intended to proceed alone. If the Assistant Attorney General decides to enter the case, copy the entire file to the Attorney General's office.

h. Copy the served accusation/statement of issues to the Commission.

i. Provide whatever assistance is required by either the Hearing Examiner or the Assistant Attorney General to arrange for and conduct the pre-hearing conference and hearing.

5. Commission meeting:

a. Upon receipt of the proposed decision after hearing, provide copies to the parties, all Commissioners and to the Lieutenant Governor.

b. Once decided, ensure that the adoption order is signed by the Chairman.

c. Provide copies of the closed complaint summaries for review by the Commission.

d. An uncontested hearing will have neither a Hearing Examiner nor an Assistant Attorney General present. The Investigator will present the case to the Commission at the meeting as if the matter were contested. Each Commissioner will be provided with a full copy of the investigative report and evidence that supports the accusation or statement of issues.

6. Post-meeting:

a. Copy all parties with the adopted decision in the license action by certified mail. Include a reconsideration request form to the respondent if the decision was to revoke, suspend or deny.

b. Notify each complainant of complaint closure.

c. Publish the decision in the licensee's local newspaper on three successive weekends thirty days after service of the adopted decision to the respondent (and counsel) if there has been no granted reconsideration request by the Commission and/or appeal to the Superior Court. Publication can be immediate in uncontested cases.

7. Stop Orders:

a. When a stop order is needed, the Investigator will poll the Commission for approval. The Commission will be given a brief explanation of the

need for the stop order; this will be a written statement so that all members receive the same information. A majority of the Commission must approve service. Any Commissioner not contacted directly will be informed by telegram.

b. The Investigator will draft the stop order and take it to the Attorney General's office for review. The Investigator will also ask the coordinating Assistant Attorney General to review enforcement procedures available should the subject(s) of the stop order refuse to abide by it.

c. The stop order may be served by certified mail or in person by the Investigator. Upon service of the stop order, the Investigator will make sure that the subject(s) understand that it is a definite order from the Commission to stop the identified activity, and that to continue is a violation which could result in a further charge.

d. An affidavit of service will be completed.

e. A copy of the stop order, with supporting documentation and the investigative report, will be provided to the Attorney General's office if a notice of defense is filed. This will be done as soon as possible after receipt to comply with the requirement that hearings in such matters be scheduled within thirty days.

f. If the subject continues to operate without licensure after service of the stop order, the Investigator will notify the Attorney General's office to enforce the order.

#### 8. Subpoenae:

a. When a subpoena is needed, the Investigator will poll the Commission for approval. The Commission will be given a brief explanation of the need for the subpoena; this will be a written statement so that all members receive the same information. A majority of the Commission must approve service. Any Commissioner not contacted directly will be informed by telegram.

b. Service may be by mail or in person. An Affidavit of Service will be completed.

c. If the recipient of the subpoena does not comply, the Investigator will contact the Attorney General's office by memorandum to request enforcement. The Investigator will provide any assistance that may be requested by the Assistant Attorney General.

0007K/8      Mk IV      102985



# MEMORANDUM

State of Alaska

TO: Michael Thill, Staff Assistant  
Senate Labor & Commerce Committee

DATE: April 30, 1986

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown  
Attorney General  
By: *[Signature]*  
Peter B. Froehlich  
Assistant Attorney General

SUBJECT: Proposed amendment  
to SB 487 concern-  
ing general regula-  
tion adoption  
authority

As I mentioned to you by telephone yesterday, there is an additional clarifying amendment that should be included in SB 487 on the Real Estate Commission. That amendment would correct an apparent oversight which has resulted in the absence of an explicit grant to the commission of general regulation adoption authority. Currently, AS 08.88 includes two explicit grants to the commission of specific regulation adoption authority, but no grant of the typical general regulation adoption authority usually given to occupational licensing boards and commissions.

The commission has the following explicit specific regulation adoption authority:

Sec. 08.88.081. COMMISSION REGULATIONS. The commission shall adopt regulations pertaining to the responsibilities of persons licensed under this chapter and the grounds for revoking or suspending a license.

Sec. 08.88.111. COMMISSION REGULATIONS. The commission shall adopt procedural regulations describing

- (1) how it conducts an examination;
- (2) how a person applies to take an examination, applies for a license, and registers that person's office.

I propose that AS 08.88.081 be amended to add a general regulation adoption authorization and at the same time consolidate the two specific authorities as follows:

\* Sec. 2. AS 08.88.081 is amended to read:

Sec. 08.88.081. COMMISSION REGULATIONS. The commission shall adopt regulations necessary to carry out the purposes of this chapter including regulations

- (1) pertaining to the responsibilities of persons licensed under this chapter and the grounds for

revoking or suspending a license;

and (2) describing how it conducts an examination;

(3) describing how a person applies to take an examination, applies for a license, and registers that person's office.

Renumber the following sections of the bill accordingly.

Of course, AS 08.88.111 should then be repealed.

This additional amendment would clarify that the Real Estate Commission has the same general regulation adoption authority as do other agencies. We believe that the commission has this authority implicitly, even without this amendment but it would be better to make the authority explicit.

Concerning SB 487 as a whole, we believe that the bill includes both some desirable housekeeping amendments and some amendments that may not be desirable, or that at least may require more study.

Please let me know if I can provide you or the committee any further information on this proposed amendment to SB 487, or on the entire bill.

PBF:md

cc: Hon. Loren Lounsbury, Commissioner  
Dept. of Commerce & Economic Development

James Magowan, Director  
Real Estate Commission

Arthur H. Peterson  
Assistant Attorney General  
Legislation/Regulations Section

SB

42

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

SENATE  
Bill Version: CSSB 42 (SA)  
Publish Date: 4/29/87

REQUEST

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
 Title: An Act relating to the BRU: Retirement and Benefits  
retirement incentive program.  
 Sponsor: Duncan Components: Retirement Incentive Program (RIP)  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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 I/A & PGM RCPTS	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:	0	0	0	0	0	0
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

Prepared By: *R. F. Stalnak* Phone: (907) 465-4470  
 Division: Retirement and Benefits Date: April 23, 1987  
 Approved by Commissioner: Garrey Peska Date: 4/28/87  
 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 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: CS SB 42 54  
Publish Date: 4-23-87

REQUEST

Revision Date: Bill/Res No: SB 42  
Title: An Act relating to the early retirement program.  
Sponsor: Duncan  
Requestor: \_\_\_\_\_

Agency Affected: Administration  
BRU: Retirement and Benefits  
Components: Retirement Incentive Program (RIP)

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
<b>OPERATING</b>						
PERSONAL SERVICES	0	69.1	120.3	0	0	0
TRAVEL	0	1.9	0	0	0	0
CONTRACTUAL	0	20.0	20.0	0	0	0
SUPPLIES	0	1.0	1.5	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
<b>TOTAL OPERATING</b>	0	92.0	141.8	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	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 I/A & PGM RCPTS	0	92.0	141.8	0	0	0
<b>TOTAL</b>	0	92.0	141.8	0	0	0

POSITIONS:

	0	0	0	0	0	0
FULL-TIME	0	2.0	3.0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

Prepared By: J. K. Humphreys *John A. Lopez* Phone: (907) 465-4470  
Division: Retirement and Benefits Date: January 23, 1987  
Approved by Commissioner: Garrey Peska *Garrey Peska* Date: 1/27/87  
Agency: Department of Administration

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

SENATE BILL 42  
FISCAL NOTE ANALYSIS

Prepared by Division of Retirement and Benefits  
Department of Administration

ANALYSIS:

This legislation extends the Retirement Incentive Program (RIP) through FY 89. The money to fund the RIP positions and the contractual costs listed below will be collected as part of the administration fee paid by each employer who participates in the RIP.

Personal Services:

See attached forms. Two positions are requested in the fiscal note for FY 88, under the assumption that three positions which were originally requested in the division's operating budget for FY 88 prior to this proposed extension of the RIP program will be granted. There are seven nonpermanent positions authorized in FY 87 for the RIP; this request, along with the three RIP positions requested in the FY 88 budget, would result in a decrease to a total of five RIP positions for FY 88, and a further decrease to three positions in FY 89.

Travel:

\$1.9 represents the cost of two counseling trips in FY 88; one for participating school districts and the other for participating political subdivisions.

Contractual:

\$20.0 represents 75% of projected FY 87 costs, based upon actual expenditures from July through December 1986. Contractual costs include postage, forms, printing, phones, and data lines.

An analysis of the impact of this bill on the actuarial soundness of the Public Employees' (PERS) and Teachers' (TRS) Retirement Systems funds is provided in the attached letter to Senator Abood.

Position Title Retirement and Benefits Technician II			No. of Positions 2	Range/Step 128	Org. Unit G	Gov.	Approv.	Disapp.
Time Status Full-time	Staff Months 12.0	RP Number 1	Location AWA	Election District 4		Leg.		
Type of Expenditure			Justification					
		Amount	Retirement and Benefits Technician II (two positions)					
1	2	3	The Retirement and Benefits Technicians II are responsible for the day-to-day technical duties of the RIP and are needed through June 30, 1989. These positions are both permanent full-time positions located in the Juneau office. The major duties of the technicians are:					
Salary 2 positions	51,240		1) Calculate retirement projections and retirement benefits for members of the PERS and TRS;					
Benefits	17,814		2) Research the member files for record system maintenance;					
Premium Pay			3) Correct service records in the automated system and adjust for periods of leave without pay;					
Other			4) Maintain records for the RIP; and					
Total Personal Services		69,054	5) Notify members by mail of their retirement status, effective dates, amounts of benefits, etc.					
Travel								
Contractual		2,000						
Commodities		1,000						
Equipment								
Other								
Total Cost		72,054						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004							
	I-A Receipts 1005		23,778					
	Program Receipts 1028		48,276					
	CIP Receipts 1061							
	Other							
For B&M Use Only								
Key Number _____								

8/6B2/0126-15/3

**Request For  
New Position**

Agency Administration  
BRU Retirement and Benefits  
Component Retirement Incentive Program (RIP)

**FY 88**

Page 3 of 4  
Revised Date

# Alaska State Legislature

Senate Advisory Council



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

## MEMORANDUM

TO: Senator Mitch Abood  
Alaska State Senate

ATTN: Carol Horos

FROM: Paula d. Scavera   
Researcher

DATE: March 20, 1987

I have received information from the University concerning University employees that have retired under the Retirement Incentive Program and have compiled this information with the other departments.

Attached are the updates for the two charts with the information from the University included.

STATUS OF POSITIONS VACATED BY RIP

AGENCY	*DELETED	VACANT	FILLED AT HIGHER RANGE	FILLED AT HIGHER STEP	FILLED AT LOWER RANGE	FILLED AT LOWER STEP	CHANGED FROM FULLTIME TO PARTTIME	FILLED AT LOWER MONTHLY SALARY	FILLED AT EQUAL RANGE \STEP	TOTAL
*****										
Governor	2		**2				1			5
Revenue		4		1	1	4		1		11
M. Affairs	1				1					2
Correc.		2			4	7				13
CRA		1							1	2
LEG.AFF.	3	1								4
DEC		1				1			1	3
LAW	2	1								3
DOT	9	69	1	3	3	44			13	142
DNR	15	2				6			3	26
COMM.	4	3			1	1			2	11
LEG.Audit	1									1
Labor	2	7		1		4			1	15
ADMIN	5	5			7	10	2			29
EDUC	6	6	1		1	3				17
P.Safety	2	26			14					42
HESS	3	30		2	6	31			1	73
Fish&Game	11	7	2		3	8			2	33
UNIV.	11	18			17					46
TOTALS	77	183	6	7	58	119	3	1	24	468

\*Deleted in FY 87 or FY 88 Budget

\*\* 1 of these positions is now vacant

EXEMPT EMPLOYEES RETIRED UNDER RIP

Agency	Commissioner	Deputy Commissioner	Director	Other	TOTAL
*****					
Governor				5	5
Revenue				1	1
Education			1		1
DOT		1	3		4
Corrections			1		1
CRA	1				1
Public Safety	1		3		4
L . Affairs				4	4
Leg. Audit				1	1
Fish & Game			1	2	3
DNR			3		3
Commerce				4	4
DEC			1		1
Admin			3	1	4
HESS				1	1
UNIV.				25	25
TOTALS	2	1	16	44	63

# Alaska State Legislature

Senate Advisory Council




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

## MEMORANDUM

TO: Senator Mitch Abood  
Alaska State Senate

ATTN: Carol Horos

FROM: Paula d. Scavera   
Researcher

DATE: March 13, 1987

RE: Retirement Incentive Program

Attached are my findings on the people who have retired under the Retirement Incentive Program. I have also included comments from various personnel officers on how RIP is working or not working in their departments and school districts.

I was not able to include the University retirees in my research, because my letter of February 19, 1987 (copy attached) was never answered, nor were any of my phone calls.

If you have any questions, please contact me.

Attachment:

## RETIREMENT INCENTIVE PROGRAM (RIP)

The benefits and costs of the Early Retirement Incentive Program can be looked at from several angles as different departments had different philosophies on what the objectives were for this particular program. One school district has a formula that if a persons age and years of service equaled 70, then you qualify. Using this formula the school district immediately is able to show whether there is a savings on someone who fills that position. No other department or school district has a similar approach on who qualifies for RIP and who doesn't. I did not come across any other formulas.

The school districts and state departments also have different unions and personel rules. In general, school districts have more flexibility by filling positions at a lower pay scale. When a teacher with many years of service at the highest pay scale retires, the school district can hire a teacher right out of college at the lowest pay scale showing significant savings. State employee union and personel rules dictate that when a position is open in state government, the position is available to other state employees regardless of years of scrvic. The position can be filled at a lower, equal, or even higher pay step, resulting in less cost savings, if any at all.

Chart 1 shows that there are 165 vacancies within the retiree positions. These positions are vacant for various reasons which include:

1. To help relieve the "budget crisis".
2. To help pay for a position somewhere else that was filled at a higher range or step.
3. The position may be deleted or,
4. Position not filled yet, recruitment in progress.

There are as many state personnel officers opposed to extending the program as there are in favor of extending the program. Some personnel officers indicate that if the program is extended the "old timers will stay till the very end, and we need them to leave now for the savings".

Chart 2 shows exempt positions that retired under the Retirement Incentive Program.

The "Other" column includes exempt positions with commissions and corporations that are contained within these departments.

Those departments not listed did not have any exempt employee that retired under RIP. I might add that one department's personnel officer had the understanding that exempt employees were not eligible for the RIP program.

Chart 3 is a list of the state employees that retired under RIP and the department's cost was more than \$ 50,000.

School district personnel officers made the most comments on whether or not RIP was working. They pointed out that there is bigger savings in their Teacher Retirement/RIP as opposed to their Public Employee/RIP.

I talked to nine school districts with the largest number of retired teachers. They all agreed that there are substantial savings as they could hire teachers at the lowest pay scale to fill the highest pay scale retirees because of the flexibility of the hiring regulations. Two of the personnel officers were adamant that RIP not be extended until next year or the year after. The school district finds it necessary to get rid of their highest paid teachers now, since they desperately need the savings. In fact one school district is paying a monetary bonus if a teacher will sign up for RIP before the end of this month (the bonus is based at \$50 per year of service and <sup>2 1/2%</sup> 2% of the teacher's salary).

Since the Anchorage School District has not performed any analysis or tracking of their RIP positions, Chart 4 does not include the Anchorage School District.

STATUS OF POSITIONS VACATED BY RIP

AGENCY	*DELETED	VACANT	FILLED AT HIGHER RANGE	FILLED AT HIGHER STEP	FILLED AT LOWER RANGE	FILLED AT LOWER STEP	CHANGED FROM FULLTIME TO PARTTIME	FILLED AT LOWER MONTHLY SALARY	FILLED AT EQUAL RANGE \STEP	TOTAL
*****										
Governor	2		**2				1			5
Revenue		4		1	1	4		1		11
M Affair	1				1					2
Correc.		2			4	7				13
CRA		1							1	2
LEG.AFF.	3	1								4
DEC		1				1			1	3
LAW	2	1								3
DOT	9	69	1	3	3	44			13	142
DNR	15	2				6			3	26
COMM.	4	3			1	1			2	11
LEG.Audit	1									1
Labor	2	7		1		4			1	15
ADMIN	5	5			7	10	2			29
EDUC	6	6	1		1	3				17
P.Safety	2	26			14					42
HESS	3	30		2	6	31			1	73
Fish&Game	11	7	2		3	8			2	33
TOTALS	66	165	6	7	41	119	3	1	24	432

\*Deleted in FY 87 or FY 88 Budget  
 \*\* 1 of these positions is now vacant

## EXEMPT EMPLOYEES RETIRED UNDER RIP

Agency	Commissioner	Deputy Commissioner	Director	Other	TOTAL
Governor				5	5
Revenue				1	1
Education			1		1
DOT		1	3		4
Corrections			1		1
CRA	1				1
Public Safety	1		3		4
L . Affairs				4	4
Leg. Audit				1	1
Fish & Game			1	2	3
DNR			3		3
Commerce				4	4
DEC			1		1
Admin			3	1	4
HESS				1	1
TOTALS	2	1	16	19	38

EMPLOYEES RETIRED UNDER RIP  
THROUGH FEBRUARY 1, 1987  
WITH EMPLOYER COST HIGHER THAN \$50,000

AGENCY	NAME	EST COST
Department of Administration		
	Krefting, Carl T.	\$ 64,545
	Wheeler, Micheal H.	78,707
Department of Revenue		
	Kimlinger, Ralph W.	62,592
Department of Health and Social Services		
	Smith, Eugene A.	59,704
	McCombs, Jack G.	53,005
	Eldemar, Mary	64,625
	Jenkins, Peter	54,872
Department of Military Affairs		
	Hoyt, John V.	71,468
Department of Natural Resources		
	Gallamore, Paul	56,185
Department of Fish and Game		
	Pegau, Robert E.	56,995
	Eaton, Martin Frank	57,170
	Gwartney, Louis A.	52,600
	Moberly, Stanley A.	73,559
Department of Public Safety		
	Preston, Charles	55,001
	Johnston,	54,119
	Lucking, John	89,433
	Rieth, Lewis	65,793
	Koziczkowski, Stanley	57,513
	Henslee, Lawrence	63,988
	Miller, Charles E.	55,180
	Detemple, Joseph	66,297
	Short, Floyd	52,281
	Brown, Robert	55,264

Troutman, Mark	\$ 55,134
Kolivosky, Michael	50,987
Barnard, Samuel	90,337
Cole, George B.	57,597

Department of Transportation

Harrington, Basil R.	58,358
Jennings, Kenneth	55,769
Johnson, Donald	54,928
Dittman, William S.	79,947
Ross, Doyle W.	84,276
Whitehead, Jack G.	58,855
Wiebe, Ray	54,773
Paul, Eldred	51,567
Cameron, Harold A.	86,455
Vanness, Michael C.	51,907
Koebelin, Howard	60,349
Benham, Loran	51,369
Johnson, Melvin	65,367
Bellville, Maurice G.	71,265
Brown, Wilson E. Jr.	53,374
Sparks, Warren S.	80,653
Davis, Paul R.	52,819
Banks, Robert F.	92,080
Gill, Larry S.	78,378

UNIVERSITY PERS

Brooks, Glenn P.	52,807
------------------	--------

STATUS OF TEACHING POSITIONS VACATED BY RIP

SCHOOL DISTRICT	DELETED POSITIONS	FILLED AT HIGHER PAY SCALE	FILLED AT LOWER PAY SCALE	FILLED AT EQUAL PAY SCALE	TOTAL
*****					
Fairbanks	1		15		16
Kodiak		1	3		4
Nenana	1		2	1	4
Mat-Su	6		1	2	9
S ka			1		1
Kenai	7		7		14
Cooper River	2		4	1	7
Juneau			3		3
TOTALS	17	1	36	4	58

# Alaska State Legislature

Senate Advisory Council



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

February 20, 1987

Wendy Redman, Acting Director  
Human Resource Development  
University of Alaska  
1 Bunnell Building  
Fairbanks, AK 99775

Dear Ms. Redman;

The Senate Advisory Council has been requested to research the Early Retirement Incentive Program. Specifically what happened to the position that the retiree held? Was the position filled by an individual at a lower or equal pay scale? Or was the position filled by someone at a higher pay scale and savings taken from a position elsewhere in the department?

Enclosed you will find a list of the people in your department who retired under the Early Retirement Incentive Program. Your timely response in answering the above questions concerning the positions and people listed would be greatly appreciated.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Paula D. Scavera".

Paula D. Scavera  
Researcher

PDS:jts

Enclosure

DIVISION OF RETIREMENT AND BENEFITS  
 UNIVERSITY OF ALASKA FERS AND TRS  
 EMPLOYEES RETIRED UNDER RIF  
 THROUGH FEBRUARY 1, 1987

UNIVERSITY FERS

SHUE, JANE	86-11	RF	13-00-01	4124
DOWDING, FIELDER G	86-11	RF	13-00-01	4241
CROWE, RONALD G.	86-11	RF	13-00-01	207774
TAYLOR, YOUNG S	86-11	RF	13-00-01	10881
LANGFELDT--HAALAND, S	86-11	RF	13-00-01	19470
WATSON, JEANNE A	86-11	RF	13-00-01	11633
LAHBERT, MARGARET M	86-11	RF	13-00-01	13037
HENDRICKSON, JAMES A	86-11	RF	13-00-01	292293
NETTLE, ROBERT W	86-11	RF	13-00-01	18507
MANSELL, CLARKE S	86-11	RF	13-00-01	23977
OUTCALT, DAVID L	86-11	RF	13-00-01	11420
SMALL, GEORGE E	86-11	RF	13-00-01	13903
ALLISON, CAROL W	86-11	RF	13-00-01	20914
ANDERSON, JOY M	86-11	RF	13-00-01	22825
CHALDER, CHRISTINE A	86-11	RF	13-00-01	4190
HONG, YANG M	86-11	RF	13-00-01	4591
GRANT, JULIUS	86-12	RF	13-00-01	23735
PFISTERER, FRITZ	86-12	RF	13-00-01	7735
MENDENHALL, KEITH J	86-12	RF	13-00-01	16455
SHILLING, ANNA F	86-12	RF	13-00-01	45767
NELSON, JOAN	86-12	RF	13-00-01	17662
BLAHUTA, LUDVIK A	86-12	RF	13-00-01	25278
KIRKMAN, BURREL G	86-12	RF	13-00-01	28255
LANDERS, JAMES E	87-01	RF	13-00-01	19016
DAVIS, CHARLES	87-01	RF	13-00-01	13049
ATKINS, WILBUR E	87-01	RF	13-00-01	21584
RIEWE, DOLLY V	87-01	RF	13-00-01	20689
LYTLE, RICHARD F	87-01	RF	13-00-01	24526
BROOKS, GLENN F	87-01	F	13-00-01	52807
OWENS, LUKE	87-02	F	13-00-01	10212
SPOONER, MARLENE W	87-02	P	13-00-01	27882
TOTALS 31 RETIREES				588,392

UNIVERSITY TRS

DE STEFANO, PETER	86-11	RT	33-00-01	17182
MCLAUGHLIN, LAUREL	87-01	T	33-00-01	37256
MOORE, ANNABELLE F	87-01	R1	33-00-01	21728
FULLER, WILLIAM B	87-01	RT	33-00-01	19024
FENNERBAKER, WILLIAM	87-01	T	33-00-01	21551
LOGAN, FORDYCE B JR	87-01	RT	33-00-01	17221
SMITH, JAMES A	87-01	RT	33-00-01	29466
DUELES, SHIRLEY A	87-01	PT	33-00-01	2276

STETSON, MARGUERITE 87-02 T 33-00-01 26923

TOTALS 15 RETIREES 355,550

BY DAVE STOUT 2/13/87

DOA Budget  
Subcommittee  
Marsha Hubbard

February 11, 1987

RETIREMENT INCENTIVE PROGRAM

It is unfortunate that this program wasn't on the books in fiscal year 1986 for us to evaluate now. The budget authorized by the Legislature during the 1985 session was the budget the departments lived with throughout that year.

If the program had been in operation that year, I believe it would have shown substantial dollar savings and those savings would have been easy to identify. As an employee retired under the program, the savings from deleting that position (for example) could have been paid directly to the retirement system.

In fact, though, the program was effective at the beginning of fiscal year 1987. When the program was implemented, departments calculated projected three-year savings totalling \$18.9 million.

At almost the same time those savings were calculated, the budget was restricted by 15% due to the drop in oil revenue. The result of that action was that the savings being generated by deleted positions or positions being paid at lower steps have disappeared into the much larger 15% restriction.

The budgets have been cut dramatically and that was accomplished in part because people have elected early retirement.

The operating departments face a problem, though. Since the budgets have been restricted, they can't get at the portion of any savings generated by early retirements to pay in to the retirement funds. The payments for three years of retirees' and the state's contributions must come out of the budgets in addition to the 15% restrictions.

One of the purposes of this program stated in the law is to "reduce the hardship of layoffs." So far this year, 430 employees have elected to retire under the Retirement Incentive Program. If those people had not elected to retire, they or someone else would most certainly have been laid off to meet the budget restrictions.

A liberal interpretation of the law led the previous administration to allow formation of units consisting of people whose retirement generated net costs as well as those where net savings are experienced. As long as the net balance for the total unit generated a savings figure, everyone in the unit was certified eligible for early retirement.

February 11, 1987

If this program was to be implemented again, it should be required that real dollar savings be shown for each individual retiree or they should not be eligible.

Many of those eligible have scheduled retirement dates later this fiscal year and early next fiscal year and the Department of Law advises that those certified as eligible have a contractual right to retire under the program up to the statutorily set expiration date (October 1, 1987 for Executive Branch employees).

## Chapter 26

## AN ACT

Creating a retirement incentive program for members of the Public Employees' Retirement System and the Teachers' Retirement System; and providing for an effective date.

\* Section 1. PURPOSE. Since it is necessary for state agencies and may be necessary for other employers who participate in the state retirement systems to reduce their personal services costs because of declining state revenue, a program encouraging employees to retire voluntarily may reduce the hardship of layoffs. This program is intended to realize sufficient economies to offset the cost of administration and benefits to state agencies and other employers resulting from the award of retirement credits and to result in a net reduction in personal services costs to the state or other employer during a period of declining revenue.

\* Sec. 2. STATE EMPLOYEES. (a) Before a state agency lays off employees, the executive head of the agency shall consider the potential savings in personal services costs from the agency's participation in the retirement incentive program. The agency head may designate organizational units composed of members of the Public Employees' Retirement System or the Teachers' Retirement System who are eligible to participate in the retirement incentive program. The administrator shall approve a designated organizational unit if the Office of Management and Budget certifies that participation in the program by the unit will result in a savings to the agency in personal services costs and that the designation only includes

## Chapter 26

representatives from job classifications whose inclusion contributes to the overall cost savings.

(b) A vested member who is a state employee in the Public Employees' Retirement System and who is in a designated organizational unit on the date the agency head designates the unit and who has been continuously employed by the state since January 1, 1986, is eligible to participate in the retirement incentive program. A vested member who is a state employee in the Teachers' Retirement System and who is in a designated organizational unit on the date the agency head designates the unit and who has been continuously employed by the state since January 1, 1986, is eligible to participate in the retirement incentive program.

(c) Notwithstanding (b) of this section and sec. 5(e) of this Act, a member who was laid off from state employment after December 31, 1985, and who meets the other requirements of this Act is eligible to participate in the program even if the member has not been continuously employed by the state since January 1, 1986.

\* Sec. 3. OTHER EMPLOYEES IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM. The governing body of a municipality, other political subdivision of the state, or public organization that has elected to participate in the Public Employees' Retirement System under AS 39.35.550 - 39.35.650 may adopt a resolution designating organizational units in the municipality, political subdivision, or organization and establishing requirements for employees who are eligible to participate in the retirement incentive program. The administrator shall approve the designation after receiving a certified copy of the resolution if the employer meets the requirements of this Act. A vested member of the Public Employees' Retirement System who meets the requirements established by the resolution is eligible to participate in the retirement incentive program.

\* Sec. 4. OTHER EMPLOYEES IN THE TEACHERS' RETIREMENT SYSTEM. A school

## Chapter 26

board or other employer under the Teachers' Retirement System may designate organizational units and establish requirements for employees who are eligible to participate in the retirement incentive program. The employer shall notify the administrator of the designation and the administrator shall approve it if the employer meets the requirements of this Act. A vested member of the Teachers' Retirement System who meets the requirements of the designation is eligible to participate in the retirement incentive program.

\* Sec. 5. PROGRAM REQUIREMENTS. (a) The administrator shall accept the application of an eligible vested member if

(1) the member will be qualified to retire under AS 14.25.110 or AS 39.35.370 after receipt of the retirement incentive and will be appointed to retirement on or before

(A) October 1, 1987, if the member is an employee of the state other than the University of Alaska, or a member of the Teachers' Retirement System other than an employee of the University of Alaska;

(B) January 1, 1988, if the member is an employee of the University of Alaska;

(C) April 1, 1988, for all other members of the Public Employees' Retirement System; and

(2) the member's agency or the employer under AS 14.25 or AS 39.35.550 - 39.35.650 has signed a reimbursement agreement that

(A) requires the agency or employer to reimburse the system for each member who is retired within three years after the end of the fiscal year in which the member is appointed to retirement in an amount equal to

(1) the actuarial equivalent of the difference between the benefits the member receives after the addition of the

## Chapter 26

retirement incentive under this section and the amount the member would have received without the incentive less the amount the participant has paid on the indebtedness determined under (c) of this section; and

(11) an appropriate share of the administrative costs of the program; and

(B) provides that contributions from the agency or employer to the system under this section take priority over other obligations of the agency or employer to the maximum extent permitted by law.

(b) In determining whether a member will qualify to retire under (a) of this section, only service credit for employment rendered to an employer under AS 14.25 or AS 39.35 may be used except as provided in (f) of this section.

(c) A participant in the retirement incentive program receives a credit of three years. The three years must be applied in the following order

(1) to reduce the age or service required for eligibility for normal retirement or the age required for eligibility for early retirement under AS 14.25.110, AS 39.35.370, or 39.35.385;

(2) to reduce the actuarial adjustment required for early retirement;

(3) as years of credited service for calculating retirement benefits; the years shall be considered years of credited service earned before July 1, 1981, for calculating benefits under AS 14.25.110 or AS 39.35.370; or

(4) a combination of (1) - (3) of this subsection.

(d) A participant in the retirement incentive program is indebted to the system. For a member in the Public Employees' Retirement System, the amount of the indebtedness is 15 percent for a peace officer or fireman, or SCS CSHB 382(Fin)

## Chapter 26

12 and three-quarters percent for other members, of the member's actual annual compensation, or the calculated annual compensation for a member who works fewer than 12 months, for the calendar year in which the member terminates employment to participate in the program. For a member in the Teachers' Retirement System, the amount of indebtedness is 21 percent of the member's actual compensation for the school year, or the calculated school year compensation for a member who works less than the entire school year, for the school year in which the member terminates employment to participate in the program. An outstanding indebtedness at the time a participant is appointed to retirement shall necessitate an actuarial adjustment to the benefits payable.

(e) A member who wishes to participate shall apply on a form provided by the administrator. A member may not apply for participation in the retirement incentive program unless the member is employed in a position in a designated organizational unit. A state employee other than an employee of the University of Alaska, or a member of the Teachers' Retirement System other than an employee of the University of Alaska, may apply for participation in the program until June 30, 1987. An employee of the University of Alaska may apply for participation in the program between October 1, 1986, and September 30, 1987. Other members of the Public Employees' Retirement System may apply for participation in the program between January 1, 1987, and December 31, 1987.

(f) Notwithstanding other provision of law, a vested member who is a state employee may receive credit for municipal employment before the municipality became an employer under the system for purposes of determining eligibility for retirement under AS 14.25.110 or AS 39.35.370. The member may not receive credit under this subsection for those years for purposes of determining benefits. In order for an employee to receive credit under this subsection, the state agency must show that the

## Chapter 26

employee's participation in the program will contribute to the overall cost savings of the agency.

(g) To recover a delinquency owed by an employer other than the state under an agreement entered under (F)(2) of this section, the Department of Administration may

(1) bring an action against the employer; or

(2) direct that the amount of the delinquency or a lesser amount be withheld from any money payable to the employer by a state department or agency and that the amount withheld be credited to the delinquency.

\* Sec. 6. OFFICE OF MANAGEMENT AND BUDGET. (a) When designating an organizational unit for participation in the retirement incentive program, the executive head of a state agency shall provide the Office of Management and Budget with information that describes with particularity the expected effect of participation in the program on the agency's personal services cost and operation by employees in the unit.

(b) A state agency that is participating in the retirement incentive program shall report as required by the Office of Management and Budget on the cost of each member's participation and the effect on the agency's personal services cost and operation.

(c) The Office of Management and Budget shall report to the legislature in January 1987 and 1988 on the effect of the retirement incentive program on state operation and personal services costs.

\* Sec. 7. INDEBTEDNESS ON REEMPLOYMENT. If a participant in the retirement incentive program is reemployed as a member of the Public Employees' Retirement System under AS 39.35 or the Teachers' Retirement System under AS 14.25 after appointment to retirement under the program, the participant loses the incentive credit received under sec. 5 (c) of this Act and is indebted to the system. The amount of the indebtedness is equal to 110 percent of the amount the participant received as a result of

# **CORRECTION**

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

## Chapter 26

1 12 and three-quarters percent for other members, of the member's actual  
 2 annual compensation, or the calculated annual compensation for a member who  
 3 works fewer than 12 months, for the calendar year in which the member  
 4 terminates employment to participate in the program. For a member in the  
 5 Teachers' Retirement System, the amount of indebtedness is 21 percent of  
 6 the member's actual compensation for the school year, or the calculated  
 7 school year compensation for a member who works less than the entire school  
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 9 participate in the program. An outstanding indebtedness at the time a partici-  
 10 pant is appointed to retirement shall necessitate an actuarial adjust-  
 11 ment to the benefits payable.

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 13 by the administrator. A member may not apply for participation in the  
 14 retirement incentive program unless the member is employed in a position in  
 15 a designated organizational unit. A state employee other than an employee  
 16 of the University of Alaska, or a member of the Teachers' Retirement System  
 17 other than an employee of the University of Alaska, may apply for partici-  
 18 pation in the program until June 30, 1987. An employee of the University  
 19 of Alaska may apply for participation in the program between October 1,  
 20 1986, and September 30, 1987. Other members of the Public Employees'  
 21 Retirement System may apply for participation in the program between  
 22 January 1, 1987, and December 31, 1987.

23 (f) Notwithstanding other provision of law, a vested member who is a  
 24 state employee may receive credit for municipal employment before the  
 25 municipality became an employer under the system for purposes of determin-  
 26 ing eligibility for retirement under AS 14.25.110 or AS 39.35.370. The  
 27 member may not receive credit under this subsection for those years for  
 28 purposes of determining benefits. In order for an employee to receive  
 29 credit under this subsection, the state agency must show that the

## Chapter 26

1 employee's participation in the program will contribute to the overall cost  
 2 savings of the agency.

3 (g) To recover a delinquency owed by an employer other than the state  
 4 under an agreement entered under (e)(2) of this section, the Department of  
 5 Administration may

6 (1) bring an action against the employer; or

7 (2) direct that the amount of the delinquency or a lesser amount  
 8 be withheld from any money payable to the employer by a state department or  
 9 agency and that the amount withheld be credited to the delinquency.

10 \* Sec. 6. OFFICE OF MANAGEMENT AND BUDGET. (a) When designating an  
 11 organizational unit for participation in the retirement incentive program,  
 12 the executive head of a state agency shall provide the Office of Management  
 13 and Budget with information that describes with particularity the expected  
 14 effect of participation in the program on the agency's personal services  
 15 cost and operation by employees in the unit.

16 (b) A state agency that is participating in the retirement incentive  
 17 program shall report as required by the Office of Management and Budget on  
 18 the cost of each member's participation and the effect on the agency's  
 19 personal services cost and operation.

20 (c) The Office of Management and Budget shall report to the legisla-  
 21 ture in January 1987 and 1988 on the effect of the retirement incentive  
 22 program on state operation and personal services costs.

23 \* Sec. 7. INDEBTEDNESS ON REEMPLOYMENT. If a participant in the re-  
 24 tirement incentive program is reemployed as a member of the Public Em-  
 25 ployees' Retirement System under AS 39.35 or the Teachers' Retirement  
 26 System under AS 14.25 after appointment to retirement under the program,  
 27 the participant loses the incentive credit received under sec. 5 (c) of  
 28 this Act and is indebted to the system. The amount of the indebtedness is  
 29 equal to 110 percent of the amount the participant received as a result of

Chapter 26

1 participation in the program for which the participant was not otherwise  
 2 entitled, including the cost of health insurance. The participant is  
 3 entitled to a credit to be applied against the reemployment indebtedness in  
 4 the amount the participant has paid under sec. 5 (d) of this Act. Interest  
 5 accrues on the indebtedness at the rate established by regulation from the  
 6 date of reemployment until the member is appointed to retirement and ac-  
 7 cepts an actuarial adjustment to the member's future benefits or until the  
 8 amount is paid in full.

9 \* Sec. 8. DEFINITIONS. The definitions set out in AS 14.25.220 apply  
 10 to this Act for members of the Teachers' Retirement System. The defi-  
 11 nitions set out in AS 39.35.680 apply to this Act for members of the Public  
 12 Employees' Retirement System.

13 \* Sec. 9. A member who is eligible under secs. 2 - 5 of this Act and  
 14 who has submitted a timely application for participation in the retirement  
 15 incentive program may be considered for participation in the program not-  
 16 withstanding sec. 11 of this Act.

17 \* Sec. 10. An employee does not have a vested or contractual right to  
 18 any benefit under this Act until an agreement is executed with the adminis-  
 19 trator that permits the benefits to be offered to an organizational unit of  
 20 which the employee is a member. The legislature reserves the right to  
 21 change any aspect of the incentive program as it relates to members of  
 22 organizational units for which participation agreements are executed by the  
 23 administrator after the effective date of the changes.

24 \* Sec. 11. Sections 1 - 6 of this Act are repealed July 1, 1988.

25 \* Sec. 12. This Act takes effect immediately in accordance with AS 01.-  
 26 10.070(c).

Eff. 5/16/86

Chapter 27

AN ACT

Relating to arrest by a peace officer without a warrant  
 and service of process in cases of domestic violence.

\* Section 1. AS 12.25.030(b) is amended to read:

(b) In addition to the authority granted under (a) of this  
 section, a peace officer without a warrant may arrest a person when  
 the peace officer has reasonable cause for believing that the person  
 has committed a crime under AS 11.41, AS 11.46.330, or AS 11.61.120,  
or has violated an ordinance with elements substantially similar to  
the elements of a crime under AS 11.41, AS 11.46.330, or AS 11.61.120,  
 when the victim is a spouse or former spouse of the person who commit-  
 ted the crime; a parent, grandparent, child, or grandchild of the  
 person who committed the crime; a member of the social unit comprised  
 of those living together in the same dwelling as the person who com-  
 mitted the crime; or another person who is not a spouse or former  
 spouse of the person who committed the crime but who previously lived  
 in a spousal relationship with the person who committed the crime.

\* Sec. 2. AS 22.20.110 is amended to read:

Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF AP-  
 PEALS, THE SUPERIOR COURT AND DISTRICT COURTS. When required by the  
 supreme court, and except as otherwise provided in AS 25.35.040, the  
 commissioner shall serve and execute all process issued by the court  
 of appeals, the superior court, and the district courts, {,} attend to

12.25.030(b)

22.20.110

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

### DIVISION OF RETIREMENT & BENEFITS

PLEASE REPLY TO:

P.O. BOX CR  
JUNEAU, ALASKA 99811-0203  
PHONE: (907)465-4460

2600 DENALI ST. SUITE 401  
ANCHORAGE, ALASKA 99503  
PHONE (907) 277-7504

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

STEVE COWPER, GOVERNOR

April 23, 1987

The Honorable Tim Kelly  
Chairman, Labor & Commerce Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Senator Kelly:

Re: Committee Substitute for Senate Bill 42 (State Affairs)

In accordance with AS 24.08.036, I am providing the analysis below on CSSB 42 (SA). The analysis includes the long-term and short-term costs to the state if the bill is adopted and the impact the bill will have on the actuarial soundness of the Teachers' Retirement System (TRS) funds. Required changes to the appropriation for the Division of Retirement and Benefits are discussed in a separate fiscal note.

The Retirement Incentive Program Act requires state agencies and participating employers and employees to reimburse the PERS or TRS for the cost of participation in the program; it also requires state agencies to show savings in order to participate in the program. As the amendments in this bill make no changes to those requirements, there should be no long-term and short-term costs to the state. There will not be any impact on the actuarial soundness of the retirement systems funds if this bill becomes law.

Sincerely,



Robert F. Stalnaker  
Deputy Director

RFS/cam/7

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: CSSB 42 (SA)  
Publish Date: April 22, 1987

REQUEST \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An Act relating to the  
retirement incentive program.  
Sponsor: Duncan  
Requestor: \_\_\_\_\_

Agency Affected: Administration  
BRU: Retirement and Benefits  
Components: Retirement Incentive Program (RIP)

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
<b>OPERATING</b>						
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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER I/A & PCM RCPTS	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

	0	0	0	0	0	0
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

Prepared By: *R. F. Stalnaker*  
Robert F. Stalnaker  
Division: Retirement and Benefits

Phone: (907) 465-4470  
Date: April 23, 1987

Approved by Commissioner: Garrey Peska  
Agency: Department of Administration

Date: 4/28/87

Distribution (by preparer):

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

Rev. 9/16/86

POSITION PAPER

CSSB 42 (State Affairs)

This bill would extend the window of eligibility an additional three months for the Retirement Incentive Program (RIP) for members of the Teachers' Retirement System (TRS) not employed by the state; allow members of the TRS to attain eligibility for service retirement by combining credit under the RIP with non-membership service in addition to membership service; and allows appropriations for the RIP to be included in the Working Reserve account.

The extension of the RIP for teachers not employed by the state has been argued to provide the school districts with more flexibility in staffing for this upcoming school year. The inclusion of non-membership service as qualifying for the RIP will treat all teachers more equitably as a group, by allowing those teachers who could retire with 25 years of combined service to also take advantage of the RIP. The final provision, concerning inclusion of RIP appropriations in the Working Reserve account, will help state agencies to pay off their RIP liabilities more quickly, thereby not imposing upon following fiscal years.

The department supports this bill for the reasons stated above.

*for Robert L. Statnaker*  
\_\_\_\_\_  
Director of Division of Retirement & Benefits

*4-23-87*  
\_\_\_\_\_  
Date

*Garrey Peska*  
\_\_\_\_\_  
Commissioner Garrey Peska  
Department of Administration

*4/24/87*  
\_\_\_\_\_  
Date

S B

6 1

**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: Szymanski & Kerttula

Requestor: Senate HFSS

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						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Jacquelyn McClintock  
Division: Workers' Compensation

Phone: 465-2790  
Date: 02/02/87

Approved by Commissioner: Jim Sampson  
Agency: Labor

Date: 02/02/87

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

Bill No. Senate Bill 61

Date April 23, 1987

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

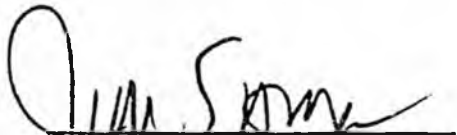
Contact: Jacque McClintock  
465-2790

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



# Alaska State Legislature

Senator Mike Szymanski

## MEMORANDUM

Senate HESS Committee Members

From: Senator Mike Szymanski  
Date: February 9, 1987  
Subject: Overview of Senate Bill 61, " An Act relating to the Rights of Injured State Workers."

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

Interim  
11920 Johns Rd.  
Anchorage, AK 99515  
(907) 349-3373

1024 W. 6th  
Anchorage, AK 99501  
(907) 276-6739

During the past two years, it became clear to me in discussions with professionals in the field of vocational rehabilitation that the current state procedures for reemployment of injured state workers are grossly inadequate. In fact, some have even suggested that the state is the worst offender in this area. In most organizations, injuries received in the line of duty call for support and rewards from the organization, not punishment.

Senate Bill 61, which I introduced last year as HB 318, incorporates recommendations from several state agencies and professional organizations who specialize in vocational rehabilitation. The objective of the legislation is three-fold:

1) The legislation would require detailed position descriptions to be kept for every state job. Such descriptions, by spelling out the responsibilities and physical requirements of each position, would greatly aid in the reemployment of injured state workers. Although an injured employee may not be able to perform all of the tasks required of a job class, in many cases the employee could perform the essential duties of a particular position within the class. With detailed position descriptions the placement of partially disabled employees would be easier.

2) The bill would establish procedures for granting injured state workers employment preference. Under this legislation, an injured state employee returning to the work force would be given preference for employment in open positions for which the employee is qualified. Such preference would enable injured workers to resume full or modified employment much sooner, thus saving the state thousands of dollars in disability benefits.

3) The legislation would establish clear guidelines for refusing to rehire or continue the employment of a former employee if the employment would impose an undue hardship on the operation of an agency. The onus would be on the agency to prove that the employee could not reasonably perform the essential duties of the position. No longer could an injured employee be refused work without justification, as has happened on occasion.

In contrast to most legislation, SB 61 would not only not require a state financial investment, but would result in substantial savings to the state in lessened disability payments and in training time and expense saved by continuing to utilize experienced workers. Just as importantly, the human dignity and self-respect which is thus preserved is immeasurable.



# Alaska State Legislature

Senator Mike Szymanski

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

Interim  
11920 Johns Rd.  
Anchorage, AK 99515  
(907) 349-3373

## SECTIONAL ANALYSIS -- SB 61

SECTION 1. Adds a new section to AS 23.40 to state that terms contrary to the provision of this legislation may not be negotiated. (Added at the request of the Division of Personnel, Department of Administration).

1024 W. 6th  
Anchorage, AK 99501  
(907) 276-6739

## SECTION 2.

### Subsection 39.25.157

Requires the Division of Personnel, in consultation with the appropriate department or agency, to develop and maintain a detailed position description for each position within the classified service.

Also disallows the imposition of general physical ability requirements on a job class unless each position within the class requires the use of the physical ability.

### Subsection 39.25.158

(a) Within 30 days after a physician's release to return to full or or modified work, an injured employee must request to return to work for the state in order to be eligible for reemployment rights.

(b) Once an employee requests to return to work, the employee will be certified as able to return under (c), (d), or (f) of this section by the Division of worker's compensation or the Director of Vocational Rehabilitation. Certification may be delayed until the employee is retrained under (f).

(c) Requires that a state agency offer an injured employee the employee's former position within 30 days, if the employee is certified able to perform the tasks assigned to the position and the position still exists. If another employee is employed in the position, the agency shall create a vacancy under AS 39.25.150(13).

(d) If an employee is not eligible for reemployment under (c), the agency is required to make efforts of reasonable accommodation (some examples of which are specified and defined in accordance with federal language) to the physical & mental limitations of the employee if they are no longer able to perform all of the tasks assigned to them.

(e) If the employee is not eligible under (c) or (d), and the agency has a vacant and comparable position, then the agency must offer that position to the employee. If the employee is no longer capable of filling that comparable position, then the employee is entitled to a similar and vacant position in another agency, if he is capable of performing the work.

(f) If the employee cannot be reemployed in a comparable position by an agency, then the employee may either i) request reemployment at a lower wage, or ii) accept retraining under AS 23.30.041. After retraining, the employee may request reemployment in his new field of training with the original agency, and if no positions are available, at a comparable position with another agency.

(g) Establishes guidelines for refusal by an agency to reemploy or continue the employment of a former employee, including undue hardship.

(h) Lists the factors the agency may take into consideration in determining undue hardship.

(i) Requires that an injured employee requesting and eligible for reemployment with an agency who is able to perform the essential functions of the position be the only person certified for that position (except employees in layoff status for that job class).

(j) Prevents collective bargaining agreements from negating any of the provisions of this bill;

(k) Definitions section.

### SECTION 3

Prevents this Act from altering in any way collective bargaining agreements already in existence on the effective date of the Act.



# Alaska State Legislature

Senator Mike Szymanski  
M E M O R A N D U M

Senator Paul Fischer, Chair  
Senate HESS Committee

From: Senator Mike Szymanski, Sponsor  
Senate Bill 61

Date: February 9, 1987

Subject: Scheduling of Hearing for SB 61

While in Session:  
P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
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I would like to formally request that a hearing be scheduled for a bill of mine which is in your Committee as the Committee of first referral; that is, Senate Bill 61, "An Act Relating to Rights of Injured State Workers."

Passage of the bill would protect State employees who have been injured on the job in service to the state, by allowing them special consideration for return to their job once they have recovered from their injuries. It would also benefit the state (and could conceivably result in a negative fiscal note if research on it could be done in a cost-effective manner); because it would help to keep workers in the work force who bring depth of training and experience back to the job, so it is not lost.

The bill clearly spells out the rights and obligations for both the employer and employee, to ensure that particular cases are dealt with consistently.

During the 14th legislature, I submitted this bill in the House as HB 318. As you can see from the attached, this bill passed the House on a 38-0-1-1, and made it all the way through the Senate to Senate Rules, where it died in the logjam of bills in the final hours of last year's session.

The bill received the support of the Department of Labor and the Administration; and much work was done at the Committee level to take their requests and concerns, as well as the requests and concerns of many other groups, into account. As a result, SB 61 this year picks up the language of last year's bill and so the Department of Administration has come in with a zero fiscal note (see attached) and a position paper that is supportive.

I have a great deal of back-up information in my personal files from last year on this bill. If you need any more back-up, please feel free to contact my offices. Attached for your reference are:

- 1) Zero Fiscal Note from Dept. of Administration
- 2) Position paper of support from the DOA
- 3) A Sectional Analysis of the Bill
- 4) An Overview Letter to Senate HESS members on the bill
- 5) A House Research Agency paper on the subject
- 6) Last year's bill history on HB 318

Bill No. Senate Bill 61

Date April 23, 1987

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

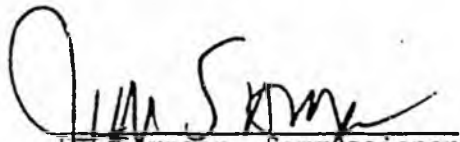
Contact: Jacque McClintock  
465-2790

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

**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: Szymanski & 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						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

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

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

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	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

POSITION PAPER  
SB 61

This bill deals with the return to work of those State employees who have been injured on the job and were terminated from their positions after that injury.

Passage of the bill will benefit the State in terms of the depth of training and experience the worker who was injured on the job will bring back to the workforce.

The bill makes the obligations of both the employer and the employee clear and it has built in safeguards which ensure that a State's expert in the field will determine the employee's readiness to return to work. This will ensure that the matter is dealt with in a consistent manner.

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

The Division of Personnel supports the intent of this legislation.

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*Diana DeSimone*

\_\_\_\_\_  
Diana DeSimone, Director  
Division of Personnel

*1/27/87*

\_\_\_\_\_  
Date

*Garrey Peska*

\_\_\_\_\_  
Commissioner Garrey Peska  
Department of Administration

*1/27/87*

\_\_\_\_\_  
Date

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
<b>OPERATING</b>						
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
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	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
<b>TOTAL</b>	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



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y. State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

RECEIVED OCT 13 1984

October 11, 1984

MEMORANDUM

TO: Representative Mike Szymanski

FROM: Sharman Haley  
Legislative Analyst

RE: Priority Rehire For Disabled State Employees  
Research Request 35-025

You have asked about instituting a policy of preferential rehire for State employees who are forced to leave their jobs due to work-related disabilities. Short summaries of rehire policies in Washington, Oregon, and Idaho as well as the U.S. Postal Service and the Municipality of Anchorage are provided below. A discussion of policy alternatives for amending Alaska law along similar lines follows.

WASHINGTON

An employee of the State of Washington who becomes disabled cannot be terminated for at least sixty days. Supervisors have broad discretion to extend leave without pay to the injured employee and fill the position temporarily until the employee is able to resume his or her duties. If the injured employee is out longer than sixty days and is terminated from his or her position, the employee is eligible to be placed on the Reduction In Force (RIF) list for that job class when he or she is ready to return to work. Persons on the RIF list have the right of first hire when vacancies in that job class appear.

If the disabled employee is not able to resume the duties of his or her former job class and seeks reemployment in an alternate job class, the employee must go through the normal application and testing procedures to be certified to the register for the alternate job class. Once certified, the disabled employee is entitled to hiring preference over applicants on the open competitive register. If the alternate job class constitutes a promotion, the disabled employee has second hire priority after those on the RIF list. If the alternate job class is a demotion or lateral transfer, reemployment preference over open competitive candidates is at the discretion of the hiring authority.

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October 12, 1984  
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Under Washington law, a person whose disability keeps them out of work for more than 120 days is referred to a vocational rehabilitation counselor for evaluation and vocational rehabilitation planning. A person who is permanently disabled may qualify for the state's equal employment opportunity program for the handicapped. Washington State civil service rules allow handicapped persons to test for any job class for which they meet the minimum qualifications, whether or not that register is open for recruitment. State agencies have the option of using the list of qualified handicapped workers, in preference to the regular register when filling vacancies.

Incentive for state agencies (or any employer) to hire workers with occupational injuries is provided by the Preferred Worker Program, which excludes the worker from the computation of workers' compensation premiums for a period of three years. The benefits due the worker in the event of an injury during the three-year period are covered by the state's Second Injury Fund.

#### OREGON

Of the states contacted, Oregon has the strongest laws for rehiring injured employees. Oregon civil rights law provides that an injured employee has the right to reinstatement on demand in his or her former position, or in any other job, if a position is available and the worker able to perform the duties of the job. In the state system, responsibility for rehiring the injured employee falls on each agency. Oregon statutes also require "reasonable accommodation" for the special needs of handicapped workers. In the state personnel system, this may include some restructuring of the job.

#### IDAHO

Idaho personnel rules provide that when an employee is absent due to injury or illness, the job is held open for the employee and may not be declared vacant for at least six months. If the worker has not returned to work within six months and is terminated, for an additional 12 months the worker is eligible to be placed on the lay-off register for that agency if the doctor has cleared the employee for return to work. If the employee is not able to resume the same job duties, the agency has some discretion to modify work for the employee, but there is no program or policy to further accommodate workers who must change job classes.

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### U.S. POSTAL SERVICE

The U.S. Postal Service goes beyond the requirements of federal law to return injured employees to work. Under federal law, an injured federal employee who is able to return to work within one year has the right to return to the same or an equivalent position in the same agency. If it takes longer than a year to return to work, the employee has the right to priority placement in the same or equivalent position in that or another federal agency. The returning federal employee is credited with wage step increases and other benefits based on length of service for the entire time he or she was out on disability compensation.

A partially or temporarily disabled postal employee is on leave status until the doctor certifies that the employee is able to return to work. The worker is either returned to his or her former job, with some modification of duties if needed, or transferred to an alternate job. In planning a placement, the post office considers the risk of reinjury and the potential compensation costs as well as the skills and abilities of the worker. Only if this assessment indicates that the worker will not be returned to federal service is the employee terminated.

The responsibility for finding or creating a job falls on the local postmaster. To encourage the placement of partially disabled workers, the salary of a partially disabled employee is not paid out of the operating unit's budget, nor are the hours worked by a partially disabled worker counted in computing the operating unit's productivity rating. Thus the operating units are able to show a higher productivity, for which they are rewarded, by utilizing partially disabled workers.

### ANCHORAGE

The Municipality of Anchorage has implemented a modified work program for municipal employees injured on the job. The stated purposes of the program are to minimize long-term costs to the municipality and to return the employee to good health and productive employment at the earliest opportunity.

Under the modified work program, an injured worker who is able to resume partial duties will be placed in modified work for up to three months while the worker is in transition back to full duties. If rehabilitation requires a complete change in employment, participation in the modified work program may exceed three months. The worker is paid his or her full regular salary during the period of modified work. If the worker's permanent job placement is at a lower salary than his or her old job, two-thirds of the difference is paid to the employee through the city's workers compensation account. Workers whose disability precludes them from placement in a permanent position receive a worker's compensation settlement.

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While providing modified work is the responsibility of each municipal agency, a job placement coordinator for the municipality as a whole oversees the development of modified jobs and placements. According to Harry Sjoberg, Risk Manager for the municipality, the city's experience with the program has shown significant reductions in compensation claims and changes in the attitudes of supervisors and injured employees alike. Prior to institution of the modified work program, the prevailing pattern was that supervisors were not inclined to rehire an employee at anything less than 100 percent productivity. Employee morale suffered from prolonged periods off work. Mr. Sjoberg said that now less work time is lost, supervisors show more concern for the circumstances of their injured employees, and rehabilitation is quicker.

#### ALASKA

Under the Alaska personnel rules, leave without pay due to a disability is at the discretion of the supervisor, but in any case may not exceed the employees length of service or 24 months, whichever is shorter. The supervisor may cancel leave without pay upon notice to the absent employee. If the employee does not report for duty on the specified date, he or she may be terminated immediately.

A disabled classified employee terminated "in good standing" has rehire rights for two years from the date of termination. This means that they will be placed on the transfers and rehires list for that job class, which agencies may use in preference to the regular register when seeking applicants to fill vacancies. A few departments such as Health and Social Services have internal policies requiring agency heads to use the transfer and rehire list first, but most departments leave this to the discretion of the supervisor.

Injured State workers who are unable to resume the duties of their former job have few advantages in seeking other State jobs. They must go through the same process as anyone else of finding job classes for which they qualify, waiting for an open recruitment period for that class, taking applicable tests, getting on the job register, and successfully competing with other applicants. If the worker is fortunate enough to still be on leave and thus retain permanent employee status, he or she may be eligible for noncompetitive appointment at the discretion of the hiring authority.

State law provides that workers absent from work more than 90 days due to an on-the-job injury have a right to vocational rehabilitation evaluation. This includes an assessment of skills and abilities, aid in planning for training and rehabilitation, and job placement assistance.

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If the worker qualifies as severely handicapped and is a client of the Division of Vocational Rehabilitation, the worker may be referred to a State job and hired noncompetitively if the hiring authority chooses.

State workers whose occupational injuries disable them from resuming their former job duties qualify for a disability pension under the Public Employees Retirement System. The pension is terminated in one year, however, unless the recipient submits evidence that he or she meets the qualifications for federal Social Security disability income (SSI). Federal standards for SSI are stringent; the worker must be unable to hold any gainful employment, not merely his or her former job.

Policy alternatives to facilitate reemployment of injured State workers in Alaska, patterned after some of the preferential rehire programs in other jurisdictions, are listed below:

#### POLICY OPTIONS

1. Employees could be guaranteed the right to disability leave.
2. Injured workers returning to work could be placed on the lay-off list, which assures them priority placement within their former job class.
3. Injured workers unable to resume the duties of their former job class could be allowed to test for any other job class for which they meet the minimum qualifications, whether or not recruitment is open.
4. Hiring preference in alternate job classes for which the worker qualifies could be granted by making the worker eligible for the lay-off, promotion, or transfer and rehire lists. Eligibility for the lay-off list would guarantee the worker first priority placement, while the promotion and the transfer and rehire lists would give the worker preference only at the option of the hiring authority.
5. A modified work program could provide injured workers job duties tailored to their capabilities during a period of transition back to full duties or to a new job.
6. State agencies could be given incentives to rehire disabled State workers, such as omitting the disabled worker from the calculation of their worker's compensation assessment.
7. State employees injured in the course of their employment could be guaranteed State jobs when doctors certify that the employees

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are able to return to work. The employee would be reemployed in their original job class if they were able to perform the duties, in an alternate job class for which they qualify, in an alternate job class for which they may be retrained, or in a modified job tailored to their individual capabilities.

8. The injured worker could also be extended the right to receive pay no less than the pay he or she received prior to injury, regardless of the final job placement.

These policy changes could be effected by amending AS 39.25.150 to direct the Department of Administration to provide for these policies in the personnel rules. Alternatively, reemployment could be mandated for all employers in the state under the workers' compensation or civil rights laws. Copies of the Oregon law and the Postal Service policy manual, both of which are regarded by vocational rehabilitation professionals as model policies, are attached.

Because the State is a self-insurer and is liable for workers' compensation benefits as well as for the disability pension payments, it may be in the State's financial interests as well as the interests of the injured worker to implement a preferential rehire policy and return the worker to a job as quickly as possible. Approximately 1,200 injured State employees file worker's compensation claims per year, of which about 200 to 250 include a claim for wage loss due to being out of work more than three days. Compensation is also paid for loss of earning capacity if the injured worker's prospective employment pays less than his or her former job. Compensation for wage loss is generally calculated at two-thirds of the lost wages, but because workers' compensation is tax exempt, the take home compensation is worth more than two-thirds of net wages lost.

\* \* \* \* \*

I am still expecting some additional information from other states to come in the mail. If upon reviewing the material I find that it provides any significant information on this issue that I have not adequately covered here, I will forward it on to you with a supplemental memo. Meanwhile, I hope that this memorandum provides you with the information that you need.

If you have any further questions please call me.

SH

**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.

(3) 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.

(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.

**.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

###### **.331 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.

###### **.332 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

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.

**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.

(3) 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.

(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.

**.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 368.

(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, 351.

#### 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 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

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**.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.

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
<b>OPERATING</b>						
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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

REQUEST: \_\_\_\_\_

Bill Version: SB 61  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to rights of  
injured state employees."  
Sponsor: Szymanski & 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						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	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: 02/02/87  
Approved by Commissioner: Jim Sampson Date: 02/02/87  
Agency: Labor

**Distribution (by preparer):**

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- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary