ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6698 SENATE STATE AFFAIRS 1102

SENATE COMMITTEE REPORT

FURTHER FIN

5/1/89

DATE TURNED INTO OFFICE 5-3-89

Mr. President:

STATE AFFAIRS Committee considered CSHB 83 (FIN)

legal holidays; and establishing Martin Luther King, Jr., Day as a legal holiday

and recommended

[ ] replace with ___ CS_____)[] same title
[ ] or adopt _____ CS_____)[] new title
[] technical title change (HB only)

[ ] attached amendment(s) and .

[ ] _____letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to _____

FISCAL NOTE(S) [ ] zero [ ] fiscal impact [ ] appropriation no FN
[ ] new [ ] updated [X] previous
[ ] same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

Tim Kelly

OTHER RECOMMENDATIONS

Jan Faib do not pass

Pat Townsend do pass

Chair signature and recommendation

[ ] Committee Backup attached

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CS HB 83 (SA)
PUBLISH DATE: HOUSE 2/15/89

No.

FISCAL NOTE

REQUEST:

Revision Date:
Title: Martin Luther King, Jr. Holiday
Sponsor: State Affairs Committee
Requestor:

Agency Affected:
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
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						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Zero Fiscal Note predicated on collective bargaining agreements which would comply with the provisions of this legislation.

Prepared by: House State Affairs Committee
Phone: 465-4931
Division:
Date: Feb 10, 1989

Approved by Commissioner: Rep. H.A. "Red" Boucher
Date: Feb. 10, 1989
Agency:

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

HB 83 MARTIN LUTHER KING, JR.,DAY

TO TESTIFY

MICHAEL MCKENNET, OFFICE OF E.E.O. (GOVERNOR'S OFFICE)

SEVERAL OTHERS HAVE BEEN CONTACTED:

REP. ULMER (WHO CARRIED THE BILL IN THE HOUSE)

REP. FURNACE

ROSALEE WALKER

BLANCHE MCSMITH

F.Y.I.

MARTIN LUTHER KING DAY NOW EXISTS AS DAY OF COMMEMORATION. HB 83 WOULD MAKE IT A LEGAL HOLIDAY.

AS ORIGINALLY INTRODUCED, KING'S BIRTHDAY WOULD HAVE BEEN AN ADDITIONAL DAY OFF FOR STATE EMPLOYEES. HOUSE FINANCE AMENDED TO COMBINE WASHINGTON'S AND LINCOLN'S BIRTHDAYS INTO PRESIDENT'S DAY, SO THERE IS NO INCREASE IN THE ACTUAL NUMBER OF HOLIDAYS. (NOTE THAT THIS CHANGE APPLIES ONLY IF ITS REFLECTED IN THE COLLECTIVE BARGAINING AGREEMENTS.)

HOUSE-PASSED VERSION HAS A ZERO FISCAL NOTE.

NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE
1411 W. 33RD AVENUE
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE
105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE
2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

March 3, 1989

To: Reps. Hoffman and Larson, Co-Chairs
Members; House Finance Committee

Re: CS for House Bill No. 83 (HESS); "An Act relating to legal holidays; and establishing Martin Luther King, Jr., Day as a legal Holiday."

NEA-Alaska strongly supports and encourages your favorable consideration of HB 83.

It is most appropriate that we acknowledge the birthday of this truly outstanding Black American who was the leader of the American civil rights movement.

Through his efforts, Dr. King not only exposed racial injustice but raised our collective conscience to all injustice and inequity in our social and economic programs. His activities represent the highest degree of patriotism and the very spirit of our democracy.

Dr. King's commitment to non-violent methods will continue to serve as a model for all interests which find the need to speak out on matters of concern.

His efforts have opened the doors of hope, aspiration, and belief in self-worth for all groups which have been disadvantaged by our social and economic systems.

It is time for the State of Alaska to acknowledge Dr. King's effort by making his birthday a legal state holiday.

We recommend also that this particular holiday be designated as a legal holiday in all of the public schools in the State.

Thank you for your consideration of our position.

Respectfully submitted,

Bob Manners
Executive Secretary

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling

P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senator Pat Pourchot, Chairman

RE: May 3 Committee Hearing

DATE: May 2, 1989

On Wednesday, May 3 at 1:30 p.m. in the Beltz Room the following bills will be back before the Senate State Affairs Committee:

SB 154, An Act relating to equipment lease-financing and authorizing a master equipment lease-financing project

SB 154 would authorize the Alaska State Building Authority to finance and acquire equipment for lease to the state. Individual lease-purchases from all state agencies would be consolidated into one or more "master leases". The advantage would be a reduction in interest cost.

At our earlier hearing on SB 154, there was concern that savings realized by state agencies through a master lease not be spent on other agency budget items, but used to reduce agency budgets. Attached is an amendment that would require the Department of Administration to annually report lease savings to the legislature on an agency-by-agency basis, thus allowing the legislature the opportunity to reduce agency budgets accordingly.

SB 157, An Act relating to imposition of a civil fine for violation of a statute, regulation, or ordinance related to alcoholic beverages

SB 157 would authorize the Alcohol Beverage Control Board to assess civil fines against liquor licensees who violate liquor laws. As introduced, the bill did not specify the amount of the fines, leaving fine setting to the sole discretion of the board.

Attached is an amendment which would require the ABC Board to establish a schedule of fines in regulation, and would limit any fine to the greater of $100,000 or an amount which is three times the pecuniary gain realized by the licensee as a result of the violation. This is patterned after the existing provision in Alaska's criminal code regarding fines.

In addition, the following bills will be heard:

HJR 19am, Ratifying an amendment to the Constitution of the United States concerning the compensation of members of the United States Congress

HJR 19 would ratify an amendment to the U.S. Constitution that would disallow any increases in pay for members of Congress from going into effect until after an intervening election had taken place. The amendment was proposed in 1789 and to date has been ratified by 26 states. To become effective, it must be approved by 38 states.

CSHB 83(Fin), An Act relating to legal holidays; and establishing Martin Luther King, Jr., Day as a legal holiday

HB 83 would establish the third Monday of January, known as Martin Luther King, Jr.'s Birthday, as a legal holiday. Lincoln's and Washington's birthdays would be combined on the third Monday in February as President's Day. This would result in an observance for Dr. King without the addition of another paid day of leave.

The bill also provides that King's birthday would be a legal holiday for state employees only if provided for in their collective bargaining agreements.

Martin Luther King Day was statutorially established as a day of commemoration in 1982. Governor Cowper issued a proclamation in January 1989 designating it a legal holiday for this year.

CSHB 87(Fin)am, An Act relating to the state budget and to long-term financial plans for the state

HB 87 would require that the Governor annually submit to the legislature a long-term financial plan. The plan must include projections of expenditures for the next six fiscal years and projections of revenues for the next ten fiscal years. The legislature would be required to adopt or revise the plan.

In addition, HB 87 would require that the Governor's annual capital improvements proposal include the estimated annual mainatenance and operation costs for the useful life of each project.

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 12, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Cotten:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to establish Martin Luther King, Jr., Day as a legal holiday. Although, in 1982, AS 44.12.045 was enacted to establish Martin Luther King Day as a day of commemoration, I firmly believe that the immeasurable contributions of Dr. King to our society merit this additional recognition.

Acting on that conviction, I recently issued a proclamation under AS 44.12.010(13) designating January 16, 1989 a legal holiday. Selecting that day, the third Monday in January, conforms to federal legislation (5 U.S.C. 6103) that designates that day a national holiday each year. To honor Dr. King on a permanent basis in Alaska, I am introducing this bill which also conforms to the federal legislation.

Sincerely,

Steve Cowper
Governor

Alaska State Legislature

Representative Fran Ulmer

P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

HOUSE OF REPRESENTATIVES

MEMORANDUM

TO: Representatives Ron Larson and Lyman Hoffman, Co-Chairs
House Finance Committee

FROM: Representative Fran Ulmer DATE: April 7, 1989

SUBJ: CSHB 83, "An Act relating to legal holidays; and establishing Martin Luther King, Jr. Day as a legal holiday

On Thursday, April 6, the Finance Subcommittee on CSHB 83 held a teleconference to permit additional testimony on the proposed committee substitute. The following persons testified:

Paul Connenty - Anchorage Equal Rights Commission

Sterling Taylor, President of Black Caucus

Aurora Hovland, Executive Director of Asian Alaskan Cultural Center

Julie Petro, Public Affairs Coordinator of the Alaska Federation of Natives

John Thomas, NAACP President of the Anchorage chapter

Cheryl Oliver, Anchorage Resident

Remond Henderson, President of Juneau Chapter of Blacks in Government

Rosalee Walker, a Juneau Resident and City and Borough of Juneau Assemblywoman

Every single person testified in support of the proposed committee substitute and urged the committee to proceed promptly. Unanimously, they concurred with the combination of Washington's and Lincoln's birthdays into one President's Day and the designation of Martin Luther King Day as the other paid holiday for public employees and the designated holiday for the entire state.

FU/bvh
cc: House Finance Committee Members

Cross reference. — For Arbor Day, see AS 41.15.900.

NOTES TO DECISIONS

Applied in In re Dalton, 8 Alaska 338 (1932).

Cited in Jefferson v. Moore, Sup. Ct. Op. No. 9 (File No. 44), 354 P.2d 373 (1960).

Collateral references. — 73 Am. Jur. 2d, Sundays and Holidays, § 1 et seq.
40 C.J.S., Holidays, § 1 et seq.

Sec. 44.12.020. Holiday falling on Sunday. If a holiday listed in AS 44.12.010, except AS 44.12.010(12), falls on a Sunday, Sunday and the following Monday are both legal holidays. (§ 1-1-6 ACLA 1949; am § 1 ch 183 SLA 1959; am § 2 ch 37 SLA 1969)

Sec. 44.12.025. Holiday falling on Saturday. If a holiday listed in AS 44.12.010 falls on a Saturday, the Saturday and the preceding Friday are both legal holidays for officers and employees of the state. (§ 1 ch 40 SLA 1966)

Sec. 44.12.030. Wickersham Day. August 24 is designated Wickersham Day in honor of James Wickersham, and is the occasion for school assemblies with appropriate programs, and other suitable observances and exercises by civic groups and the public in general. (§ 2 ch 63 SLA 1949)

Sec. 44.12.040. Anthony J. Dimond Day. November 30 is designated Anthony J. Dimond Day in honor of "Tony" Dimond, and shall be observed by appropriate school assemblies and programs, and other suitable observances and exercises by civic groups and the public at large. (§ 2 ch 133 SLA 1955)

Sec. 44.12.045. Martin Luther King Day. January 15 is designated Martin Luther King Day to honor Dr. Martin Luther King, Jr., for tireless efforts and devotion in the advancement of justice, equality and human dignity of all people. Martin Luther King Day may be observed by suitable observances and exercises by civic groups and the public. (§ 1 ch 5 SLA 1982)

Sec. 44.12.050. Ernest Gruening Day. Ernest Gruening Day is established on February 6 of each year to honor Ernest Gruening, doctor, editor, and statesman, for a lifetime of service to the territory and state of Alaska and the nation. Ernest Gruening Day may be observed by suitable observances and exercises by civic groups and the public. (§ 1 ch 13 SLA 1984)

Alaska State Legislature

Representative Fran Ulmer

P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

HOUSE OF REPRESENTATIVES

MEMORANDUM

TO: Representative Ron Larson
Chair of the House Finance Subcommittee on HB 83

FROM: Representative Fran Ulmer

SUBJ: HB 83 - A Bill Relating to Martin Luther King Holiday

DATE: March 15, 1989

You asked me to review the alternatives available to the committee on creating a Martin Luther King holiday in Alaska and make a recommendation to the committee.

After reviewing the discussion in other committees, testimony before the Finance Committee and conversations with interested individuals, I would like to recommend the attached draft committee substitute. It combines the Lincoln and Washington holidays into one President's Day, and shifts the other paid day of leave to Martin Luther King's birthday. This results in an observance for Dr. King without the addition of another paid day of leave. It is also consistent with the practice of the federal government and many school districts and city governments which recognize President's Day and Martin Luther King Day with paid holidays. Families would be better able to coordinate schedules.

I have spoken with Dave Williams, at the Alaska State Employees Association, and asked him to ask his steering committee for comments on this approach. Unfortunately, this bill and this issue may be tied up with the collective bargaining process. If this is correct, we'll need to get all parties to agree that this is an acceptable compromise and that a legislative solution is appropriate.

FU/bvh
cc: Governor Cowper

STATE OF ALASKA - OFFICE OF THE GOVERNOR

OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

P.O. Box AE (MS 0117), Juneau, Alaska 99811, (907) 465-3570

STEVE COWPER
GOVERNOR

May 4, 1989

Honorable Pat Pourchot
Chairman
Senate State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Subject: House Bill 83 - Martin Luther King, Jr. Holiday; and the word "Unific".

Dear Senator Pourchot:

Thank you for your support of the HB 83. It was a pleasure to testify before you on this matter.

There are several hurtles in the way to getting the bill to the Senate floor before this half of the session closes. It is my understanding that HB 83 now goes to Senate Finance. Supporters of the bill think it is unlikely to emerge from that committee in time to get to the floor.

My question to you is can the referral to Finance be changed at this date and, if so, could you intervene in the process with Senator Kelly to do this?

In regard to the word "unific" that I used in my testimony on Tuesday afternoon, I did some quick research after getting back to the office and could not find the word in the Webster's Ninth New College Dictionary. This had me worried so I checked out my Webster's Third New International Dictionary (Unabridged) at home. The word exists.

"Unific / adj.: tending to produce unity."

It is a terrific adjective and certainly describes the highest quality of Martin Luther King, Jr.'s ministry to this nation.

Thank you again for your assistance and for your consideration of my request. If I can answer any questions, please call me.

Sincerely,

Michael G. McKennett
Director

PUBLIC OPINION MESSAGE

DEAR: SENATOR POURCHOT

NAME: DR. PATTERSON
TITLE: AK BLACK LEADERSHIP CONFERENCE
ADDRESS: 3727 WILLIAMS
CITY: ANCHORAGE ZIP: 99508
PHONE: 561-0134
BILL NO: HB 83
SUBJECT: MARTIN LUTHER KING, JR., HOLIDAY
MESSAGE: THANK YOU FOR YOUR SUPPORT OF THE MARTIN LUTHER KING HOLIDAY BILL, HB 83.

respond
SA

POMID: 03115337
DATE: 05/08/89
TIME: 11:53:37
LIONAME: ANCHORAGE LIO

COPIES:	REPRESENTATIVES	REPRESENTATIVES	SENATORS
	BARNES	BOUCHER	BINKLEY
	BOYER	BROWN	COGHILL
	COLLINS	COTTEN	DUNCAN
	DAVIDSON	DAVIS, M.	ELIASON
	DAVIS, C.	DONLEY	FISCHER
	ELLIS	FOSTER	FRANK
	FURNACE	GOLL	HALFORD
	GRUENBERG	HOFFMAN	JONES
	HUDSON	JACKO	KELLY
	KOPONEN	LARSON	KERTTULA
	MACLEAN	MARTIN	RODEY
	MENARD	MILLER	STURGULEWSKI
	NAVARRE	PETTYJOHN	UEHLING
	PHILLIPS	RIEGER	ZHAROFF
	SHARP	SHULTZ	
	SWACKHAMMER	ULMER	
	WALLIS	ZAWACKI	
	GRUSSENDORF	FINKELSTEIN	

King.txt

ALASKA STATE LEGISLATURE

P.O. Box V
Juneau, AK 99811

907-465-3712

Senate State Affairs Committee

May 11, 1989

Robert Boyd
Dennis Weaver
601 North Flower
Anchorage, Alaska 99508

Dear Robert and Dennis:

Thank you for contacting me to express your support for HB 83, which would establish Martin Luther King, Jr.'s birthday as a legal holiday. I am happy to report that HB 83 received the full approval of both the House and the Senate, and is now awaiting the Governor's signature into law.

I supported the bill when it was heard by the Senate State Affairs Committee and voted for its passage on the Senate floor. Dr. King's efforts have opened the doors of hope, aspiration, and belief in self-worth for all groups which have been disadvantaged by our social and economic systems. It is appropriate that we acknowledge the birthday of this outstanding American.

Again, I appreciate you sharing your views.

Sincerely,

Pat

Senator Pat Pourchot
Chairman

PP/ss

H B

86

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER HB 86

SPONSOR House L&C

BILL TITLE Employee access to personnel files.

DATE REFERRED 3-7-89

HEARING SCHEDULED 3-20-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED ✓ Ginger 4954 (Donnelly)

INTERESTED PARTIES CONTACTED

✓ Eileen Plate 2700

Tom Stuart, Dept Labor x2725

12236 Keystone, Eagle River 99577

✓ Dennis Doughty, United Food & Commercial Workers 276-2829

✓ Pat Smuts AFL-CIO 463-3738

DOA, Personnel Gotheier 2201

Jamie Bollenbacher, ACLU 276-2258

Ben Ward, ARCO 586-3680

OTHER

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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

Mary Van Nimwegen

HB 86

House Judiciary 2/27/89

SENATE COMMITTEE REPORT

FURTHER L&C

DATE TURNED INTO OFFICE 3-20-89

3/7/89

Mr. President:

STATE AFFAIRS Committee considered HB 86

employers to permit employees and former employees to have access to their personnel files

and recommended

[ ] replace with ___ CS_____)[] same title
[ ] or adopt _____ CS_____)[] new title
[] technical title change (HB only)

[ ] attached amendment(s) and

[ ] _____letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to _____

FISCAL NOTE(S) [ ] zero [ ] fiscal impact [ ] appropriation no FN
[ ] new [ ] updated [X] previous
[X] same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

(Do - Pass)

OTHER RECOMMENDATIONS

Tim Kelly - No Rec

Pat Lombardo Do Pass

Chairman signature and recommendation

[ ] Committee Backup attached

HB86POOP.TXT
3/20/89

HB 86 EMPLOYEE ACCESS TO PERSONNEL FILES

NOTIFIED

REP. DONLEY, SPONSOR (GINGER BAIM)

PAT SMUTZ, AFL-CIO

TOM STUART, DEPT. LABOR

BEVERLY WARD, A.R.C.O.

— Dave Otto, Dept. Administration (Personnel)

F.Y.I.

STATE EMPLOYEES ALREADY HAVE ACCESS TO PERSONNEL FILES. HB 86 WOULD APPLY TO PRIVATE SECTOR ALSO.

INTENT: ENSURE THAT EMPLOYEE RECORDS PASSED FROM ONE EMPLOYER TO ANOTHER ARE ACCURATE.

BILL DOESN'T REQUIRE EMPLOYERS TO ESTABLISH PERSONNEL FILES. BUT IF DO HAVE THEM, MUST LET EMPLOYEES SEE THEM.

BEVERLY WARD (A.R.C.O.) TESTIFIED IN HOUSE -- NONE OF HER CONCERNS WERE ADDRESSED IN BILL:

no way!

ARCO HAS 26,000 EMPLOYEES IN ALASKA. ADMINISTRATIVE BURDEN IF ALL DECIDE WANT TO SEE AND COPY THEIR FILES.

FORMER EMPLOYEES' FILES ARE SENT TO A PERMANENT STORAGE LOCATION. HASSLE IF HAVE TO RETRIEVE THESE.

FILES MAY CONTAIN PROPRIETARY INFORMATION. ? salary, pay scale, info on other employees

13 OTHER STATES AND WASHINGTON D.C. HAVE SIMILAR LAWS:

CONNECTICUT - EMPLOYEE MUST PAY COST OF SUPPLYING DOCUMENT, NOT JUST DUPLICATION COSTS. CAN ONLY VIEW 2 TIMES/YR. EMPLOYEE MUST REQUEST IN WRITING. SOME MATERIAL OFF-LIMITS EVEN IF IN FILE: MEDICAL RECORDS, BONUS PLAN RECORDS, LETTERS OF REFERENCE, ANYTHING TO DO WITH A CRIMINAL INVESTIGATION.

CALIFORNIA - CAN'T ACCESS LETTERS OF REFERENCE, CRIMINAL INVESTIGATION RECORDS.

WASH. D.C. - ACCESS ONLY IN PRESENCE OF EMPLOYER. "CERTAIN INFORMATION" CAN'T BE DISCLOSED.

MASSACHUSETTS - CAN'T ACCESS INFORMATION OF A PERSONAL NATURE ON SOMEONE OTHER THAN THE EMPLOYEE.

DELAWARE, ILLINOIS, AND OTHERS ALSO LIMIT WHICH DOCUMENTS MAY BE ACCESSED.

MANY STATES ALSO ADDRESS WHAT AN EMPLOYEE CAN DO IF HE DISAGREES WITH WHAT'S IN HIS FILE.

ALASKA CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union

P.O. Box 201844
Anchorage, AK 99520-1844

Office Location:
310 K Street
Anchorage, Alaska
(907) 276-2258

Jamie Bollenbach
Executive Director

To: Senate State Affairs Committee
From: Jamie Bollenbach, Alaska Civil Liberties Union
Re: Comments on HB 86
Date: March 21, 1989

The Alaska Civil Liberties Union strongly supports HB 86. The Union is interested in this as an issue of fairness in employment within the private and public sectors. With the recent Alaska Supreme Court decision restricting the privacy rights of private sector employees under our state constitution, legislative action to grant employees the right to inspect and copy their own personnel file is laudable.

Employers as well as employees have an interest in this legislation. The accuracy of the information in the file may depend on an employee's ability to examine and review the contents of the file. Information contained in these files is often critical to an employee's career. An accurate file facilitates fair dealing for the employee and the employer's ability to properly evaluate. The recognition that information in files may not always be accurate was part of the reason the Freedom of Information Act grants individuals the right to inspect files kept on them by some federal agencies. Fairness in employment also requires that a person <u>at least</u> be entitled to know the reasons for adverse employment action.

An inaccurate and poorly kept personnel file can also follow an employee around when looking for other work. It is difficult and sometimes impossible for an employee to evaluate whether information traded between a former and a prospective employer is correct without the employee's ability to inspect the file. (The ACLU received several complaints during the last year on the trading of information in personnel files.) If the information is wrong and is harming their chances of employment, at present there is not much an employee can do about it. Some common law protections exist, but these tend to be libel and slander, defamation of character, or emotional distress claims. The conduct of the employer must usually be outrageous for such a claim to stand, and since many people in this situation are unemployed, thier ability to sue is limited.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

May 31, 1988

MEMORANDUM

TO: Representative Dave Donley

FROM: Sandi Depue Sandi
Administrative Officer

RE: Other States' Legislation Allowing Private Sector Employees Access to Personnel Files
Research Request 88.259

You asked this agency to determine whether other states allow private sector employees access to their own personnel files. In our effort to gather this information, we contacted the National Conference of State Legislatures (NCSL) and the Council of State Governments (CSG). Our findings are summarized in this memorandum and in the attached document.

Thirteen states, plus the District of Columbia, have statutes which allow private sector employees access to their personnel files. The pertinent states are California, Connecticut, Delaware, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin. In some cases, the statutes also address photocopying of documents within a file and an employee's right to correct or add documents to his or her file.

Brenda Trolin, of NCSL, sent copies of pages from the Employment Coordinator which deal with worker privacy laws (attached). The first page of the information indicates: "...The absence of an entry for any particular state means that worker privacy issues are not expressly regulated in that state by legislation...." Besides covering drug and AIDS testing, and various other privacy issues, the document details those states that have legislation regarding employee access to personnel files and gives a short summation of the legislation. I have highlighted the relevant sections of each state's summary. State statute citations are noted; we did not, however, photocopy the actual statutes. If you would like copies of them, or those of a particular state, please let us know.

I hope you find this information useful. If you need further information, please contact this agency.

Attachment

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

ALASKA CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union

P.O. Box 201844
Anchorage, AK 99520-1844

Office Location:
310 K Street
Anchorage, Alaska
(907) 276-2258

Jamie Bollenbach
Executive Director

To: Senate State Affairs Committee
From: Jamie Bollenbach, Alaska Civil Liberties Union
Re: Comments on HB 86
Date: March 21, 1989

The Alaska Civil Liberties Union strongly supports HB 86. The Union is interested in this as an issue of fairness in employment within the private and public sectors. With the recent Alaska Supreme Court decision restricting the privacy rights of private sector employees under our state constitution, legislative action to grant employees the right to inspect and copy their own personnel file is laudable.

Employers as well as employees have an interest in this legislation. The accuracy of the information in the file may depend on an employee's ability to examine and review the contents of the file. Information contained in these files is often critical to an employee's career. An accurate file facilitates fair dealing for the employee and the employer's ability to properly evaluate. The recognition that information in files may not always be accurate was part of the reason the Freedom of Information Act grants individuals the right to inspect files kept on them by some federal agencies. Fairness in employment also requires that a person <u>at least</u> be entitled to know the reasons for adverse employment action.

An inaccurate and poorly kept personnel file can also follow an employee around when looking for other work. It is difficult and sometimes impossible for an employee to evaluate whether information traded between a former and a prospective employer is correct without the employee's ability to inspect the file. (The ACLU received several complaints during the last year on the trading of information in personnel files.) If the information is wrong and is harming their chances of employment, at present there is not much an employee can do about it. Some common law protections exist, but these tend to be libel and slander, defamation of character, or emotional distress claims. The conduct of the employer must usually be outrageous for such a claim to stand, and since many people in this situation are unemployed, thier ability to sue is limited.

The simplest way to avoid many of these problems, and more lawsuits between employers and employees, would be to grant the right to inspect the personnel file. Most employers and employees are conscientious, and I believe that disputes over the accuracy of information would tend to work out informally. If not, and the inaccurate information remains, employees would at least know what to expect when seeking promotion or looking for other work.

As a matter of public interest, state and federal law limits inquiry into an employee's marital status, religious beliefs, race, sex, or national origin, and passage of HB 86 creates an additional check on discrimination in employment. An unscrupulous employer who kept files on a person's religious beliefs, for example, would risk the employee finding out and pursuing a legitimate discrimination claim.

At least seven states have similiar statutes - California, Michigan, Connecticut, Maine, Oregon, Pennsylvania, and Wisconsin.

HB 86 would help keep the information in personnel files limited to legitimate business interests, contribute to the accuracy of that information, and promote fair dealing between employers and employees.

Please contact me anytime if you have questions or would like further comments.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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May 31, 1988

MEMORANDUM

TO: Representative Dave Donley

FROM: Sandi Depue Sandi
Administrative Officer

RE: **Other States' Legislation Allowing Private Sector Employees Access to Personnel Files**
Research Request 88.259

You asked this agency to determine whether other states allow private sector employees access to their own personnel files. In our effort to gather this information, we contacted the National Conference of State Legislatures (NCSL) and the Council of State Governments (CSG). Our findings are summarized in this memorandum and in the attached document.

Thirteen states, plus the District of Columbia, have statutes which allow private sector employees access to their personnel files. The pertinent states are California, Connecticut, Delaware, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin. In some cases, the statutes also address photocopying of documents within a file and an employee's right to correct or add documents to his or her file.

Brenda Trolin, of NCSL, sent copies of pages from the Employment Coordinator which deal with worker privacy laws (attached). The first page of the information indicates: "...The absence of an entry for any particular state means that worker privacy issues are not expressly regulated in that state by legislation...." Besides covering drug and AIDS testing, and various other privacy issues, the document details those states that have legislation regarding employee access to personnel files and gives a short summation of the legislation. I have highlighted the relevant sections of each state's summary. State statute citations are noted; we did not, however, photocopy the actual statutes. If you would like copies of them, or those of a particular state, please let us know.

I hope you find this information useful. If you need further information, please contact this agency.

Attachment

¶ EP-21,851. Worker privacy.

Whether, and to what extent, employees have rights protecting them from employer intrusion into their privacy are questions governed primarily, and almost exclusively, by state law.

Other than the federal Privacy Act, which relates to *governmental* intrusion into individuals' freedom (¶ EP-35,651 et seq.), and some court decisions holding Title VII inapplicable to employers' use of lie detectors and other truth tests (¶ EP-21,852), the federal government has thus far left the question of worker privacy in the private sector to regulation by the state legislatures.

Many states have enacted privacy statutes that deal with some aspect of the issue. Some states regulate the process by which an employer gathers information about employees and prospective employees, as well as how an employer can use or disclose to third parties the information gathered. With respect to the gathering of information, a particularly prevalent form of legislation deals with the use of polygraph or other honesty tests. Another area of common legislative concern involves the means by which an employee can gain access to his personnel file and correct or remove information from that file.

Note to Personnel: Statutory worker privacy requirements should be implemented in company personnel policies dealing with matters such as employee selection (¶ PM-10,001 et seq.), job evaluations (¶ PM-12,081 et seq.), performance appraisals (¶ PM-14,051 et seq.), employee assistance programs (¶ PM-14,801 et seq.), and counseling programs (¶ PM-14,831 et seq.).

The following divisions (¶ EP-21,855 et seq.) identify and describe the provisions of state privacy statutes,[1] which have been enacted in 33 states, as well as the District of Columbia. The absence of an entry for any particular state means that worker privacy issues are not expressly regulated in that state by legislation.

¶ EP-21,852. Effect of Title VII on use of lie detector tests.

Under Title VII, employers' use of polygraph tests to assure employee honesty has been approved, at least where the tests are not shown to have been applied unequally to,[2] or to have a disproportionate impact on,[3] minority persons.

Caution: Even though using a lie detector may not violate Title VII, this doesn't necessarily mean employers may do so with impunity. A number of states have enacted statutes prohibiting the practice. For example, the California statute prohibits private employers from requiring applicants or employees to take a polygraph as a condition of employment or continued employment (¶ EP-21,861).

Under State Laws

Arizona

¶ EP-21,855. Under what conditions can consumer report information about employees be gathered.

A consumer reporting agency may furnish a consumer report to any person the agency believes will use the information for employment purposes.[4]

¶ EP-21,856. How an employer can use consumer report information in a personnel file.

An employer that makes an adverse employment decision with regard to an individual must, upon written request, disclose the name and address of any consumer reporting agency

1. The reader is cautioned that this treatment discusses state statutes and does not attmept to reflect the law in any jurisdiction as it has been modified by administrative regulations or judicial decisions. The reader should, therefore, consult a state's regulatory compilations and judicial reporters for elaboration.
2. Ramirez v Omaha (1982, CA8) 678 F2d 751, 30 BNA FEP Cas 477, 29 CCH EPD ¶ 32698; EEOC Decision No. 76-12 (Aug 15, 1975) CCH EEOC Decisions ¶ 6607.
3. EEOC Decision No. 76-65 (Nov 21, 1975) CCH EEOC Dec ¶ 6649.
4. Ariz RS § 44-1692 subd 1(b).

that has furnished a consumer report considered in making the determination.[5]

California

¶ EP-21,860. Under what conditions can consumer report information about employees be gathered.

An investigative consumer reporting agency may furnish an investigative consumer report to any person the agency believes will use the information for employment purposes.[6] If an investigative consumer report is sought for employment purposes, the person procuring or causing the report to be made must, no later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative consumer report will be made. However, this rule does not apply when the report is sought for purposes of promotion or reassignment,[7] or to determine whether an employee is to be retained or is engaged in any criminal activity likely to result in a loss to the employer.[8]

¶ EP-21,861. How an employer can use polygraph, voice stress analysis, or similar tests.

No employer, other than the federal or state government, or an agency or local subdivision, may require any applicant or employee to submit to a polygraph, lie detector, or similar test as a condition of employment or continued employment.[9] Furthermore, no employer can request that any person take or administer such a test without first advising the person, in writing, at the time the test is to be administered, that the employer does not have the right to demand or require that the test be taken.[10] In addition, no system that examines or records the voice prints or other voice stress patterns of any person can be used to determine the truth or falsity of statements made, without express written consent given in advance.[11]

¶ EP-21,862. How an employer can use information in a personnel file.

No employee may be discriminated against in terms or conditions of employement due to a refusal to sign an authorization to disclose medical information, though an employer is not prohibited from taking necessary action in the absence of medical information due to an employee's refusal to sign an authorization.[12]

It is also unlawful for a public service corporation to discipline or discharge any employee based on a report by a special agent, detective, or spotter that involves a question of integrity, honesty, or breach of an employer rule, unless the employer gives notice and accords a hearing upon the accused employee's request. At this hearing, the employer must state specific charges, and the accused employee has the right to furnish testimony in his own defense.[13]

¶ EP-21,863. How an employee can gain access to a personnel file.

If an applicant signs any instrument relating to the obtaining of employment, he must be given a copy upon request.[14] However, this rule does not apply to employment applications filed with railroad common carriers that are subject to the Railway Labor Act.[15]

Upon request, at reasonable times and at reasonable intervals as determined by the Labor Commissioner, an employee is also entitled to inspect employer personnel files used to determine qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.[16] A copy of each employee's personnel file must be kept at the place the employee reports to work, or must be made available there within a reasonable time after the request is made.[17] However, the right of inspection does not apply to records relating to the investigation of a possible criminal offense or to letters of reference.[18]

An employer that possesses an authorization to disclose medical information regarding an

5. Ariz RS § 44-1693 subd A(3).
6. Cal Deering's Civ C § 1786.12(d)(1).
7. Cal Deering's Civ C § 1786.16(a)(2).
8. Cal Deering's Civ C § 1786.16(b).
9. Cal Deering's Lab C § 432.2(a).
10. Cal Deering's Lab C § 432.2(b).
11. Cal Deering's Pen C § 637.3(a).
12. Cal Deering's Civ C § 56.20(b).
13. Cal Deering's Pub Util C § 8251.
14. Cal Deering's Lab C § 432.
15. Cal Deering's Lab C § 434.
16. Cal Deering's Lab C § 1198.5.
17. Cal Deering's Lab C § 1198.5.
18. Cal Deering's Lab C § 1198.5.

employee must furnish a true copy of the authorization to the employee upon demand.[19]

¶ EP-21,864. How the state can gain access to signed applications.

If an applicant is required to sign an application for employment, a copy of the application form must be filed in the office of the Division of Labor Standards Enforcement.[20] However, this rule does not apply to employment applications filed with railroad common carriers subject to the Railway Labor Act.[21]

¶ EP-21,865. How an employer can disclose medical records to outsiders.

Each employer that receives medical information must establish appropriate procedures to ensure its confidentiality and protection from unauthorized use and disclosure.[22] Although disclosure of employee medical information usually requires signed authorization, there are a number of exceptions, such as when disclosure is compelled by judicial or administrative process.[23] The exceptions do not apply, however, if an employer agrees in writing with one or more of its employees or maintains a written policy that provides that particular types of medical information must not be disclosed.[24]

A disclosure of medical information pursuant to a required authorization must communicate any limitations in the authorization regarding the use of the information.[1] Cancellation or modification of an authorization is effective only after the employer actually receives written notice.[2]

Connecticut

¶ EP-21,870. Under what conditions can information about employees be gathered.

It is unlawful for an employer to operate any electronic surveillance device or system to record or monitor employee activities in areas designed for health or personal comfort or for safeguarding their possessions, such as restrooms, locker rooms, or lounges.[3] It is also unlawful to intentionally overhear or record a conversation or discussion pertaining to employment contract negotiations without the consent of all parties.[4]

¶ EP-21,871. How an employer can use polygraph tests.

No employer, including the state and any of its political subdivisions, but excluding any police department, except for civilian employees within the department,[5] may request or require that any employee or prospective employee submit to a polygraph examination as a condition of obtaining or continuing employment.[6] Furthermore, no employee may be dismissed or disciplined for failing or declining to submit to a polygraph examination.[7]

¶ EP-21,872. How an employee can correct or remove information from a personnel file.

If an employee disagrees with any of the information contained in his personnel file (¶ EP-21,874.1) or medical records (¶ EP-21,874.2), and the employee and employer cannot agree on removal or correction of the information, the employee may submit a written statement explaining his position. This statement must be maintained as part of the file or records and must accompany any transmittal or disclosure made to a third party.[8]

¶ EP-21,873. How an employee can gain access to a personnel file or medical records.

An employee is entitled to inspect his personnel file within a reasonable time after the employer receives a written request.[9] Similarly, if an employee so requests, an employer must permit a physician chosen by the employee or with the employee's consent to inspect the employee's medical records within a reasonable time after receipt of the request.[10] In addition, each employer must, within a reasonable time after receipt of a written request from an

19. Cal Deering's Civ C § 56.22.
20. Cal Deering's Lab C § 431.
21. Cal Deering's Lab C § 434.
22. Cal Deering's Civ C § 56.20(a).
23. Cal Deering's Civ C § 56.20(c).
24. Cal Deering's Civ C § 56.20(d).
1. Cal Deering's Civ C 6 56.23.
2. Cal Deering's Civ C § 56.24.
3. Conn GS § 31-48b(b).
4. Conn GS § 31-48b(d).
5. Conn GS § 31-51g(d).
6. Conn GS § 31-51g(b)(1).
7. Conn GS § 31-51g(b)(1).
8. Conn GS § 31-128c.
9. Conn GS § 31-128b.
10. Conn GS § 31-128c.

employee, provide the employee with a copy of all or part of the employee's personnel file or provide the employee's physician with a copy of the employee's medical records. However, a fee reasonably related to the cost of supplying requested document may be charged.[11]

An employer is not required to permit inspection more than twice a calendar year.[12]

¶ EP-21,874. How an employer can disclose personnel or medical records to outsiders.

With certain exceptions, no individually identifiable information contained in the personnel file or medical records of any employee may be disclosed by an employer to any person or entity not employed by or affiliated with the employer, unless the employee authorizes the disclosure in writing. The exceptions to this rule permit disclosure:

(1) to a third party that maintains or prepares employment records or performs other employment-related services for the employer;

(2) under a lawfully issued administrative summons or judicial order, including a search warrant or subpoena, or in response to a government audit or the investigation or defense of personnel-related complaints against the employer;

(3) under a law enforcement agency's request for an employee's home address and dates of attendance at work;

(4) in response to an apparent medical emergency or to apprise the employee's physician of a medical condition of which the employee may not be aware;

(5) to comply with federal, state, or local laws or regulations;

(6) where the information is disseminated under the terms of a collective bargaining agreement; or

(7) where the information merely verifies the employee's dates of employment and gives his title or position and wage or salary.

If the authorization involves medical records, the employer must remind the employee of his right or his physician's right of inspection and correction, his right to withhold authorization, and what effect withholding authorization will have on him.[12.1]

¶ EP-21,874.1. What is a "personnel file."

A "personnel file" means papers, documents, and reports pertaining to a particular employee that are used or have been used by an employer to determine the employee's eligibility for employment, promotion, additional compensation, transfer, termination, discipline, or other adverse personnel action. It includes evaluations or reports on the employee's character, credit, and work habits, but not medical records (¶ EP-21,874.2), stock option or management bonus plan records, reference letters, materials the employer uses to plan for future operations, separately maintained security files (¶ EP-21,874.3), test information that would invalidate the test if disclosed, or documents prepared for use in civil, criminal, or grievance proceedings.[12.2]

¶ EP-21,874.2. What are "medical records."

"Medical records" are all papers, documents, and reports prepared by a physician, psychiatrist, or psychologist that are in an employer's possession and are work-related or upon which the employer relies to make any employment-related decision.[12.3] An employer may keep an employee's medical records separately and not as part of any personnel file.[12.4]

¶ EP-21,874.3. What are "security files."

"Security files" are information relating to investigations of losses, misconduct, or suspected crimes, as well as investigative information maintained under government requirements. However, an employer must maintain this information separately and not use it to determine an employee's eligibility for employment to keep it from being considered part of an employee's personnel file (¶ EP-21,874.1).[13]

¶ EP-21,875. How an employer can use drug tests.

With one possible exception, an employer must use certain procedures in conducting any urinalysis drug test on employees or applicants to ensure the test's reliability (¶ EP-21,876) and

11. Conn GS § 31-128g.
12. Conn GS § 31-128h.
12.1. Conn GS § 31-128f.
12.2. Conn GS § 31-128a(3).
12.3. Conn GS § 31-128a(4).
12.4. Conn GS § 31-128c.
13. Conn GS § 31-128a(5).

safeguard the confidentiality of testing information (¶ EP-21,877). The restrictions apply to any tests on employees that are used to determine eligibility for promotion, additional compensation, transfer, termination, or a disciplinary or other adverse personnel action.[13.1]

An employer may require an employee to submit to a urinalysis drug test, only if one of the following conditions applies. First, an employer may require a test if it has a reasonable suspicion that the employee is under the influence of drugs or alcohol so that it adversely affects or could adversely affect his job performance.[13.2]

Second, it may require a test on a random basis if:

(1) the test is authorized by federal law;

(2) the employee serves in an occupation that has been designated by regulations of the state's labor commissioner as a high risk or safety-sensitive occupation; or

(3) the test is conducted as part of an employee assistance program sponsored or authorized by the employer in which the employee voluntarily participates.[13.3]

Third, it may conduct medical screenings, with the express written consent of the employees, to monitor exposure to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities if the tests are limited to the specific substances identified in the employee consent form.[13.4]

Fourth, it may conduct a test under the supervision of the division of special revenue, within the department of revenue service, relative to jai alai players, jai alai court judges, jockeys, harness drivers, or stewards participating in activities upon which pari mutuel wagering is authorized by the state's statutes.[13.5]

observation: The possible exception to the statute's various requirements involves the latter tests on participants in activities that are the subject of legalized gambling. While the law's provision concerning these tests does not use the term "exception" or "exemption," its statement that nothing in the act restricts or prevents a urinalysis drug test program conducted under the supervision of the state agency regulating those activities appears to imply an exception.

An employer may not require an applicant to submit to a urinalysis drug test as a condition of employment, unless it notifies him in writing at the time of application of its intent to do so, and gives the applicant a copy of any positive result.[13.6]

Liability for violations is discussed at ¶ EP-39,611 et seq.

observation: The law appears to regulate only the urinalysis method of drug testing. Other forms of testing, such as those that use blood, breath, or hair samples, are not expressly covered, although one might argue that the law implies a ban on any methods less reliable than those which it regulates.

¶ EP-21,876. How to administer drug tests.

Whenever an employer seeks to use a urinalysis drug test as the basis for making employment decisions, it must use a reliable methodology in an initial test, confirm any positive result from an initial test by a second and independent test that uses a reliable methodology, and again confirm with a separate third test utilizing a gas chromatography and mass spectrometry methodology or a methodology determined by the state's commissioner of health services to be at least as reliable.[13.7]

Also, it is unlawful for an employer, or its representative, agent, or designee to observe an employee or prospective employee directly in the process of producing the urine specimen to be used in its drug testing program.[13.8]

¶ EP-21,877. How an employer can disclose information obtained in drug tests.

With regard to any urinalysis drug test (¶ EP-21,875) on an applicant for employment, the employer can only disclose the results to an employee to whom the disclosure is necessary.[13.9] Results of tests on employees are subject to the same privacy protections afforded

13.1. PA 87-551, § 2.
13.2. PA 87-551, § 6.
13.3. PA 87-551, § 7.
13.4. PA 87-551, § 8.
13.5. PA 87-551, § 10.
13.6. PA 87-551, § 3.
13.7. PA 87-551, § 2.
13.8. PA 87-551, § 4.
13.9. PA 87-551, § 3.

other employee medical records (¶ EP-21,872-21,874).

The results of tests conducted by or on behalf of an employer are also inadmissible in any criminal proceeding.[13.10]

¶ EP-21,878. Effect of the drug testing law on an employer's authority.

The drug testing law permits an employer to prohibit the use of intoxicating substances during work hours, and to discipline an employee for being under the influence of such substances during work.[13.11]

Collective bargaining agreements are subordinate to the provisions of the drug testing law as to the privacy rights of any employee.[13.12]

Delaware

¶ EP-21,880. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to require or request, directly or indirectly, that any employee or prospective employee take a polygraph, lie detector, or similar test or examination, including a voice stress analysis, as a condition of employment or continuation of employment.[14]

¶ EP-21,881. How an employee can gain access to a personnel file or medical records.

Every employer must, at reasonable times upon the request of an employee, permit that employee to inspect his own personnel file used to determine his or her qualifications for employment, promotion, salary increases, termination, or disciplinary action.[14.1] More particularly, a personnel file includes employment applications, salary information, notices of commendations, warning, or discipline, authorization for a deduction or withholding of pay, fringe benefit information, leave records, employment history with the employer, and medical records. It does not include records relating to investigations of a possible criminal offense, reference letters, documents prepared for use in civil, criminal, or grievance procedures, information available to the employer under the Fair Credit Reporting Act, or material used by the employer for business operations.[14.2]

13.10. PA 87-551, § 5.
13.11. PA 87-551, § 9.
13.12. PA 87-551, § 12.
14. 19 Del C § 704.
14.1. 19 Del C § 721.
14.2. 19 Del C 720(3).

The employer must make personnel records available during the regular business hours of the office where the records are maintained. However, the employer may ask the employee to inspect his records on the employee's free time. At the employer's discretion, the employee may be required to file a written request describing either the purpose for the inspection or the particular parts of the record to be inspected.[14.3]

The employer must allow the employee sufficient inspection time, and the employee may take notes. Employers are not required to permit employees to remove their personnel records from the place where the records are maintained, and, except for reasonable cause, the employer may limit inspections to one every calendar year.[14.4]

¶ EP-21,882. How an employee can correct or remove information from personnel or medical records.

If an employee disagrees with any information contained in his personnel record, removal or correction of such information may be agreed on by the employee and his employer. If an agreement cannot be reached as to removal or correction, the employee may submit a written statement explaining his position, and the statement will become part of the employee's personnel record and must accompany any transmittal or disclosures of the record to third parties.[14.5]

District of Columbia

¶ EP-21,885. How an employer can use polygraph tests.

No employer or prospective employer may administer, accept, or use the results of any lie detector test in connection with the employment of any individual. An employer or prospective employer also cannot have administered, inside the District of Columbia, any lie detector test to any employee, or to any potential employee whose employment, as contemplated at the time of administration of the test, would take place in whole or in part in the District of Columbia.[15] This rule does not apply to any criminal or internal disciplinary investigation conducted by the Metropolitan Police, the Fire Department, or the Department of Corrections.[16]

¶ EP-21,886. How an employee can correct or remove information from a personnel file.

Each employee has the right to present information immediately germane to any information contained in his official personnel record and to seek to have irrelevant, immaterial, or untimely information removed from the record.[17]

¶ EP-21,887. How an employee can gain access to a personnel file.

The official personnel record of a District of Columbia employee must be disclosed to the employee or any representative of his choice, though disclosure must be made in the presence of a representative of the agency having custody of the records, provided that certain information, such as criminal investigative reports, not be disclosed to any employee.[18]

¶ EP-21,888. How an employer can disclose personnel records to outsiders.

The mayor of the District of Columbia is authorized to issue rules and regulations governing the disclosure of official information contained in personnel records.[19]

Florida

¶ EP-21,888.5. How an employer can disclose medical records to outsiders.

No person may be compelled to identify or provide identifying characteristics which, if disclosed, would identify any individual who is the subject of serological tests. Any person who discloses the test results to another person, unless the disclosure is to the person receiving the test, is guilty of a first degree misdemeanor. This prohibition does not apply if:

(1) written consent is obtained from the test subject;

(2) the information is disclosed pursuant to the standard practice of medicine or public

14.3. 19 Del C § 721.
14.4. 19 Del C § 722.
14.5. 19 Del C § 723.
15. DC CA § 36-802(a).
16. DC CA § 36-802(b).
17. DC CA § 1-632.5(b).
18. DC CA § 1-632.5(a).
19. DC CA § 1-632.4.

health, including consultation between physicians to determine diagnosis and treatment and communication of test results to an authorized facility; or

(3) test results are disclosed during medical or epidemiologic research without the individuals' names or identifying characteristics.[19.1]

Georgia

¶ EP-21,889. How an employer can use polygraph tests.

Georgia forbids the use of polygraph examinations except as measures of stressful physiological responses. The use of a polygraph primiarly to frighten or intimidate an examinee is prohibited.[20] Furthermore, a polygraph examiner may not use a preemployment polygraph examination as an accusatory interrogation to elicit a confession from the examinee.[21]

Any employee or applicant for employment who agrees to submit to a polygraph examination must sign a notification indicating that he is consenting voluntarily to take the examination.[22]

A polygraph examination consists of a complete pretest interview,[23] a chart examination,[24] and a post-test interview, if necessary, in which the examiner tells the employee his opinion of the test results and allows him to respond to those opinions.[25]

A polygraph examiner may not ask a question during an examination unless he has previously submitted that question in writing to the employee.[1] Furthermore, a polygraph examiner specifically may not inquire into the following areas during preemployment or periodic employment examinations: 1) religious beliefs; 2) beliefs or opinions regarding racial matters; 3) political beliefs or affiliations; 4) beliefs, affiliations or lawful activities regarding unions or labor organizations; or 5) sexual preferences.[2] An employee must be allowed to tape record his examination if it concerns any matters directly relating to employment.[3]

19.1. Fla § 381.606.
20. Ga C § 43-36-1.
21. Ga C § 43-36-15(a)(3)(B).
22. Ga C § 43-36-15(a).
23. Ga C § 46-36-13(a)(1).
24. Ga C § 43-36-13(a)(2).
25. Ga C § 43-36-13(a)(3).
1. Ga C § 43-36-13(e).
2. Ga C § 43-36-14.
3. Ga C § 43-36-15(a)(3)(F).

The information acquired from a polygraph examination may be disclosed only to: the employee or any other persons specifically designated in writing by him; the person, firm, corporation, partnership, business entity, or governmental agency that requested the examination; and any person named in a court order.[4] Moreover, the examiner, upon written request by the employee must provide that employee with a copy of any opinion or conclusions concerning the polygraph examination.[5]

An employee who believes that an examination was improperly conducted may file a complaint with the State Board of Polygraph Examiners.[6]

An examinee's rights may not be waived, and the examiner may not request that an employee execute such a waiver.[7] Georgia has created a state board of polygraph examiners and has guaranteed certain procedural rights for examinees. It has also instituted a qualification and licensing program for polygraph examiners. However, it has not specifically delineated the instances in which employers may use polygraph examinations.

Hawaii

¶ EP-21,890. Under what conditions can information about employees be gathered.

It is an unfair labor practice for an employer to employ any person to spy on employees or their representatives with respect to their exercise of any protected right.[8]

¶ EP-21,891. How an employer can use polygraph tests.

It is unlawful for any employer to require an employee to submit to a polygraph or lie detector test as a condition of employment or continued employment.[9]

Idaho

¶ EP-21,895. How an employer can use polygraph or similar tests.

No polygraph test or other lie detector test may be required as a condition of employment or continued employment.[10] However, this restriction does not apply to any law enforcement agency of the United States, the state of Idaho, or any political subdivision or governmental entity.[11]

Illinois

¶ EP-21,900. How an employer can use polygraph, voice stress analysis, or similar tests.

Every examiner licensed to administer detection of deception examinations must use an instrument that meets state standards and must make the results of the test known to the person examined within five days of receipt of a written request.[12]

¶ EP-21,900.3. How an employer can use AIDS tests.

Under Illinois' AIDS Confidentiality Act, no person may perform an HIV test, a test for the presence of the AIDS virus, unless the test's subject or his legally authorized representative gives written, informed consent.[12.1] A proper consent form must include an explanation of the test's (1) purpose, (2) potential uses, (3) limitations, (4) possible results and their meanings, and (5) procedures. The procedures must describe the voluntary nature of the test, the right to withdraw consent at any time, anonymity with respect to participation in the test and disclosure of test results, and confidential treatment of information identifying the subject and the test's results.[12.2]

Because the right to anonymity effectively allows any employee or job applicant to deny identifiable test information to any employer,[12.3] the Act severely restricts the usefulness of any workplace AIDS-testing program. However, the Act's restrictions do not apply to any

4. Ga C § 43-36-15(a)(4).
5. Ga C § 43-36-13(c)(4).
6. Ga C § 43-36-15(a)(1)(G).
7. Ga C § 43-36-15(b).
8. Haw RS § 377-6(10).
9. Haw RS § 378-21.
10. Ida C § 44-903.
11. Ida C § 44-904.
12. Ill RS c 111 § 2403.
12.1. L 1987, PA 85-679, § 4.
12.2. L 1987, PA 85-679, § 3(d).
12.3. L 1987, PA 85-679, § 6.

insurer regulated under the Illinois Insurance Code.[12.4] Also, the rule as to informed consent does not apply if a person is specifically required by law to be tested.[12.5]

¶ EP-21,900.4. How an employer can disclose information obtained from AIDS tests.

No person may disclose or be compelled to disclose the identity of anyone who is the subject of an HIV test (¶ EP-21,900.3), or disclose test results in any way that permits the test's subject to be identified. However, this rule does not apply to any disclosure made to the test subject, his legally authorized representative, any person designated in a legally effective release of the test results signed by the subject or his representative, an agent of a health facility or health care provider that has authority to obtain the test results to assure the safety of donated blood or other fluids or tissues, or a person allowed access to the record by a court order.[12.6]

¶ EP-21,901. Under what conditions can information about nonemployment activities be gathered.

An employer cannot gather or keep a record of an employee's associations, political activities, publications, communications, or nonemployment activities, unless the employee submits the information in writing or authorizes the employer in writing to keep or gather the information. However, employers are permitted to keep a record of the following employee activities:

(1) activities that occur on the employer's premises or during the employee's working hours that interfere with the performance of the employee's duties or the duties of other employees;

(2) activities, regardless of when and where they occur, that constitute criminal conduct or may reasonably be expected to harm the employer's property, operations, or business or could by the employee's action cause the employer financial liability.[13]

12.4. L 1987, PA 85-679, § 15.1.
12.5. L 1987, PA 85-679, § 11.
12.6. L 1987, PA 85-679, § 9.
13. Ill RS c 48 § 2009.

¶ EP-21,902. How an employee can gain access to a personnel file.

Employers, upon an employee's request, which may be in writing on a form supplied by the employer, must permit the employee to inspect any personnel records intended to be used in making employment decisions.[1] The employee's request to inspect personnel records must be complied with within seven working days. However, an employer may have an additional seven days to comply, if reasonable cause can be shown. An employee may, at reasonable intervals, request two inspection opportunities in a calendar year, unless otherwise provided in a collective bargaining agreement.

The inspection should take place at a location reasonably near the employee's workplace, and should occur during normal working hours, unless another time or place is more convenient for the employee. If an employee demonstrates that he is unable to review his personnel record at this location, the employer shall, upon the employee's written request, mail a copy of the requested record to the employee.[2]

The right of the employee to inspect his personnel record does not apply to:

(1) letters of reference;

(2) any portion of a test document, except a cumulative total test score;

(3) material used by the employer for management planning for work;

(4) personal information about third parties that would constitute a clearly unwarranted invasion of privacy;

(5) an employer that does not maintain any personnel records;

(6) records concerning a claim between the employer and employee that may be discovered in a judicial proceeding; or

(7) investigatory or security records maintained by an employer to investigate criminal conduct or other harmful activity by an employee, unless and until the employer takes adverse personnel action based on information in such record.[3]

An employer may charge a fee for providing a copy of the employee's personnel files; however, the fee shall be limited to the actual cost of duplicating the information.[4]

¶ EP-21,902.1. How an employee can correct or remove information from a personnel file.

If an employee disagrees with any information contained in the personnel file, the removal or correction of that information may be mutually agreed on by the employer and the employee. However, if no agreement can be reached, the employee may submit a written statement explaining his position. The employer must attach this statement to the disputed portion of the personnel record and include the statement whenever that disputed portion is released to a third party, as long as the disputed record is a part of the file. The inclusion of any written statement attached in the record, without further comment or action by the employer, will not imply or create any presumption of employer agreement with its contents. If either the employer or the employee knowingly places false information in the personnel record, the appropriate party will have a remedy through legal action to have that information expunged.[5]

¶ EP-21,903. How an employer can use information in personnel records.

Personnel information that was not included in the employee's personnel record, but should have been included, may not be used by an employer in a judicial or quasi-judicial proceeding. If, however, in the opinion of the judge in a judicial proceeding or the hearing officer in a quasi-judicial proceeding, the personnel record information was not intentionally excluded from the personnel record, it may be used by the employer in the proceeding if the employee agrees or has been given a reasonable time to review the information. Material that should have been included in the personnel record may be used at the request of the employee.[6]

¶ EP-21,904. How an employer can disclose personnel records to outsiders.

An employee who is involved in a current grievance against an employer may designate in

1. IL RS c 48 § 2002.
2. Ill RS c 48 § 2002.
3. Ill RS c 48 § 2010.
4. Ill RS c 48 § 2003.
5. Ill RS c 48 § 2006.
6. Ill RS c 48 § 2004.

writing a representative to inspect any personnel records that may have a bearing on the resolution of the grievance. The representative may be a member of the employee's union or collective bargaining unit. The employer must allow the designated representative to inspect the employee's personnel record in the same manner as he would the employee himself.[7]

Before releasing personnel records to a third party, an employer must review it and delete disciplinary reports, letters of repprimand, or other records of disciplinary action that are more than four years old. However, where the release is ordered to a party in a legal action or arbitration, such records must be disclosed.[8]

An employer or former employer cannot disclose a disciplinary report, letter of reprimand, or other disciplinary action to third parties, including a party who is not a part of the employer's organization or a party who is not part of a labor organization representing the employee, without providing written notice to the employee. The notice must be by first-class mail to the employee's last known address and should be mailed on or before the date the information is disclosed. However, the employer may disclose information without notice if:

(1) the employee has specifically waived written notice as part of a written, signed employment application with another employer;

(2) the disclosure is ordered to a party in a legal action or arbitration; or

(3) information is requested by a government agency as a result of a claim or complaint by an employee, or as a result of a criminal investigation by such agency.[9]

Iowa

¶ EP-21,905. How an employer can use polygraph tests.

An employer cannot require an applicant for employment or a current employee to take a polygraph examination as a condition of employment.[10]

Kansas

¶ EP-21,910. Under what conditions can information about employees be gathered.

It is unlawful for an employer to employ any person to spy on employees or their representatives with respect to their exercise of any right created or approved by the statute governing employer-employee relations.[1]

Maine

¶ EP-21,915. Under what conditions can consumer report information about employees be gathered.

If a consumer reporting agency furnishes a consumer report to an employer for use in determining eligibility or suitability for employment, promotion, reassignment, or retention as an employee,[2] the employer must give statutory notice to the individual.[3]

¶ EP-21,916. How an employer can use polygraph tests.

Polygraph examinations may not be used or referred to for hiring or employment purposes, with the exception of employees of or applicants for employment with law enforcement agencies. An employee may, however, voluntarily request a polygraph examination provided that the result is not used against the employee, the employee is given a copy of the statute governing polygraph examinations at the time the examination is requested, and either the examination is recorded or a witness of the employee's choice is present during the examination, or both, as the employee requests.[4]

¶ EP-21,917. How an employer can use consumer report information in a personnel file.

Denial of a benefit by an employer based wholly or partly on information contained in a consumer report or investigative consumer report from a consumer reporting agency must be disclosed in writing to the individual against whom the adverse action has been taken.[5]

¶ EP-21,918. How an employee can gain access to a personnel file.

When permitted or required by statute, records containing state employee personal infor-

7. Ill RS c 48 § 2005.
8. Ill RS c 48 § 2008.
9. Ill RS c 48 § 2007.
10. Iowa CA § 730.4.
1. Kan SA 44-808(6).
2. 10 Me RSA § 1313 subd 3.
3. 10 Me RSA § 1314.
4. 32 Me RSA § 7166.
5. 10 Me RSA § 1320 subd 1.

mation, such as performance evaluations, may be examined by the employee to whom they relate.[6] Upon written request, an employee, or former employee, must be provided with an opportunity to review his personnel file.[7] The review must take place during normal office hours, and the time spent by an employee in reviewing his file is not considered to be work time.[8]

A private or former employee is also entitled to review his personnel file, if any, upon written request to his employer.[9] The review takes place where the personnel files are maintained, during normal office hours. However, the employer has discretion to allow the review at a time and place more convenient for the employee.[10]

Transcripts, recommendations, and other documents submitted in support of an application for teacher certification and maintained in the office of the Commissioner of Education and Cultural Services may be made available to individuals and their representatives who request to examine their own records.[11] Individuals requesting copies of their records must bear the costs of copying them.[12]

A consumer reporting agency may not prohibit an employer that obtains a consumer report or investigative consumer report from disclosing the content of the report, other than medical information and sources of information, to the individual to whom it relates.[13]

¶ EP-21,919. How an employer can disclose personnel records to outsiders.

An employer that obtains a consumer report or investigative consumer report from a consumer reporting agency is prohibited from disseminating the report to any person other than the individual who is the subject of the report, with the exception of information contained in its own files as a result of its direct experience with the individual.[14]

Papers relating to examinations or evaluations of applicants for public employment, and records containing employee personal information, such as performance evaluations, are confidential and not open to public inspection. However, if disciplinary action is taken, the final written decision relating to that action is no longer confidential after it is completed.[15]

Transcripts, recommendations, and other documents submitted in support of an application for teacher certification and maintained in the office of the Commissioner of Education and Cultural Services must be confidential and may be made available only to school boards, superintendants, and authorized Department of Education and Cultural Services personnel.[16]

Maryland

¶ EP-21,926. What an employer can ask an applicant.

An employer may not require an applicant to answer any written or oral questions pertaining to any physical, psychological, or psychiatric illness, disability, handicap, or treatment that does not bear a direct and timely relationship to the applicant's fitness or capacity to properly perform the activities or responsibilities of the desired position.[17] However, a proper medical evaluation by a physician for the purpose of assessing an applicant's ability to perform a job is not prohibited.[18]

¶ EP-21,927. How an employer can use polygraph or similar tests.

An employer, other than the federal government or its agencies, may not demand or require any applicant for employment or any employee to submit to a polygraph, lie detector, or similar test or examination as a condition of employment or continued employment.[19]

All applications for employment must con-

6. 5 Me RSA § 554.
7. 5 Me RSA § 638 (state employees).
   30 Me RSA § 64 subd 2 (county employees).
   30 Me RSA § 2257 subd 2 (municipal employees).
8. 5 Me RSA § 638 (state employees).
   30 Me RSA § 64 subd 2 (county employees).
   30 Me RSA § 2257 subd 2 (municipal employees).
9. 26 Me RSA § 631.
10. 26 Me RSA § 631.
11. 20-A Me RSA § 13004 subd 2.C.
12. 20-A Me RSA § 13004 subd 3.
13. 20 Me SA § 1320 subd 3.
14. 20 Me RSA § 1320 subd 3.
15. 5 Me RSA § 554 (state government classified service).
    30 Me RSA § 64 subd 1 (county employees).
    30 Me RSA § 2257 subd 1 (municipal employees).
16. 20-A Me RSA § 13004 subd 2.
17. Md AC Art 100 § 95A(a).
18. Md AC Art 100 § 95A(b).
19. MD AC Art 100 § 95(b).

tain a statutory notice regarding polygraph examinations set out in bold face upper case type and separately acknowledged by the signature of the applicant.[20]

Massachusetts

¶ EP-21,930. Under what conditions can consumer report information about employees be gathered.

An employer that procures or causes the preparation of an investigative consumer report on any individual must give statutory disclosure to the individual.[21]

A consumer reporting agency may furnish a consumer report to any person the agency believes will use the information for employment purposes.[22]

¶ EP-21,931. How an employer can use polygraph tests.

It is unlawful for any employer to subject any employee or applicant, including any person applying for employment as a police officer, to a lie detector test, or to request, directly or indirectly, that a lie detector test be taken. Moreover, all applications for employment in Massachusetts must contain a clearly legible notice regarding the unlawful character of lie detector tests in the state. A lie detector test means any test utilizing a polygraph or any other device, mechanism, instrument or written examination, that is operated or the results of which are used or interpreted by an examiner for the purpose of detecting deception.[23]

¶ EP-21,931.5. How an employer can use tests for AIDS.

It is unlawful for an employer to require HTLV-III antibody or antigen (AIDS) tests as a condition of employment.[23.1]

¶ EP-21,932. How an employer can use consumer report information in a personnel file.

Disclosure is required if employment is denied or terminated wholly or partly because of information contained in a consumer credit report.[24]

¶ EP-21,933. How an employee can gain access to consumer or medical reports.

Within a reasonable period of time after an individual receives disclosure that an employer has procured or caused the preparation of an investigative consumer report on the individual, a complete and accurate disclosure of the nature and scope of the investigation requested may be obtained.[25] The individual may also obtain from a consumer reporting agency clear and accurate disclosure of any consumer report on the individual that the agency has furnished for employment purposes within two years preceding the request.[1]

If an employer requires a physical examination of an employee, the employee is entitled, upon request, to be furnished with a copy of the medical report following the examination.[2]

¶ EP-21,934. How an employee can correct or remove information from a personnel file.

If there is a disagreement between an employee and his employer over any information contained in the employee's personnel record, the employer and employee may mutually agree on a removal or correction of the information. If they cannot agree, the employee may submit a written statement explaining the employee's position, and that statement becomes a part of the employee's personnel record. The employer must include that statement whenever it transmits information in that personnel record to a third party as long as the original information remains part of the file. If an employer places in a personnel record any information that it knew or should have known to be false, the employee has a right through procedures authorized by a collective bargaining agreement, other personnel procedures, or judicial process to have that information deleted from the record.[2.1]

¶ EP-21,934.3. How an employee can gain access to personnel records.

An employer must provide any employee who makes a written request to review his personnel record with an opportunity for such a review. The review must occur at the place of

20. MD AC Art 100 § 95(c).
21. Mass ALM c 93 § 53(a).
22. Mass ALM c 93 § 51(3)(b).
23. Mass ALM c 149 § 19B.
23.1. Mass ALM c 111 § 70(F).
24. Mass ALM c 93 § 62(a).
25. Mass ALM c 93 § 53(b).
1. Mass ALM c 93 § 56.
2. Mass ALM c 149 § 19A.
2.1. Mass ALM c 149 § 52C.

employment during normal business hours. Also, the employer must provide the employee with a copy of his personnel record if the employee submits a written request for it. In this context, a "personnel record" does not include information of a personal nature on someone other than the employee, if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.[2.2]

Michigan

¶ EP-21,935. Under what conditions can information about an employee's nonemployment activities be gathered.

An employer must not gather or keep a record of an employee's associations, political activities, or other nonemployment activities, unless the information is submitted in writing by or authorized to be kept or gathered, in writing, by the employee to the employer, or the activities occur on the employer's premises or during the employee's working hours and interfere with the employee's duties or duties of other employees.[3] If a record of such nonemployment activities is kept as permitted, it must be part of the personnel record.[4]

However, when an employer has reasonable cause to believe that an employee is engaged in criminal activity that may result in loss or damage to the employer's property or disruption of the employer's business operation, and the employer is engaged in an investigation, a separate file of information relating to the investigation may be kept. Upon completion of the investigation, or after two years, whichever comes first, the employee must be notified of the investigation. Upon completion of the investigation, if disciplinary action is not taken, the investigative file and all copies of the material in it must be destroyed.[5]

If an employer is a criminal justice agency involved in the investigation of an alleged criminal activity or the violation of an agency rule by an employee, a separate confidential file must be kept, and, upon completion of the investigation, if disciplinary action is not taken, the employee must be notified.[6] If the investigation reveals that the allegations are unfounded or unsubstantiated, or if disciplinary action is not taken, the separate file must contain a notation of the final disposition of the investigation.[7]

¶ EP-21,936. How an employer can use polygraph, voice stress analysis, or similar tests.

The opportunity to refuse to take polygraph, psychological stress evaluation, or similar tests in employment situations is a civil right.[8] Furthermore, the use of polygraph examinations as a condition of employment, promotion, or change in status of employment, or as an express or implied condition of a benefit or privilege of employment, is prohibited.[9]

¶ EP-21,937. How an employee can correct or remove information from a personnel file.

If there is a disagreement with information contained in a personnel record, removal or correction may be mutually agreed upon by the employer and the employee. If an agreement is not reached, the employee may submit a written statement explaining his position.[10]

¶ EP-21,938. How an employer can use personnel record information.

It is unlawful to discipline or discharge a railroad employee based on the report of a special agent, detective, or spotter that involves a question of integrity, honesty, or breach of any employer rule, unless the employer gives notice to the employee and grants a hearing upon request. At the hearing, the employer must state specific charges, and the accused employee has the right to cross-examine the person making the report and to employ counsel.[11]

If the investigation by a criminal justice agency of an alleged criminal activity or violation of an agency rule by an employee reveals that the allegations are unsubstantiated, or if disciplinary action is not taken, information in the separate confidential file relating to the investigation must not be used in any future

2.2. Mass ALM c 149 § 52C.
3. Mich LA § 423.508(1).
4. Mich LA § 423.508(2).
5. Mich LA § 423.509(1).
6. Mich LA § 423.509(2).
7. Mich LA § 423.509(2).
8. Mich LA § 37.2102(1).
9. Mich LA § 37.203.
10. Mich LA § 423.505.
11. Mich LA § 750.519.

consideration for promotion, transfer, additional compensation, or disciplinary action.[12]

Personnel record information that was not included in the record, but that should have been included, may not be used by an employer in a judicial or quasijudicial proceeding, unless, in the opinion of the judge or hearing officer, the information was not intentionally excluded. Furthermore, the employee must agree to such use or have been given a reasonable time to review the information.[13] Material that should have been included must be used at the request of the employee.[14]

¶ EP-21,939. How an employee can gain access to personnel records.

An employee is entitled to review his personnel record, upon written request at reasonable intervals, at a location reasonably near his place of employment and during normal office hours.[15] Review may be allowed at a time or location more convenient to the employee. Where review during normal office hours would require time off, some other reasonable time must be provided.[16] If an employee demonstrates an inability to review the personnel record at the employing unit, the employer must mail a copy of the requested record to the employee, upon written request.[17] After the review, the employee may obtain a copy of information, but an employer may charge a fee for providing the copy, limited to the actual cost of duplicating the information.[18]

¶ EP-21,940. How an employer can disclose personnel records to outsiders.

An employer or former employer must not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without prior written notice to the employee by first-class mail to his last known address. However, this requirement does not apply if the employee has specifically waived written notice as part of a written, signed employment application with another employer, the disclosure is ordered in a legal action or arbitration, or information is requested by a government agency as a result of a claim or complaint by the employee.[19]

An employer must review a personnel record before releasing information to a third party and must delete disciplinary reports, letters of reprimand, or other records of disciplinary action that are more than four years old, unless the release is ordered in a legal action or arbitration.[20]

If an employee submits a written statement explaining disagreement with information contained in a personnel record, the statement must be included when the record is divulged to a third party, as long as the original information is part of the file.[21]

Minnesota

¶ EP-21,945. Under what conditions can medical information about employees be gathered.

An employer, employment agency, or labor organization can, with the consent of the employee, obtain additional medical information for the purposes of establishing an employee health record.[22]

¶ EP-21,946. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to directly or indirectly solicit or require a polygraph, voice stress analysis, or any test purporting to test the honesty of any employee or prospective employee. It is also unlawful to sell or interpret a test that has been unlawfully solicited or required. If an employee requests a polygraph test, the employer or agent administering the test must inform him that taking the test is voluntary.[23] Results of a polygraph test taken at an employee's request may be disclosed only to persons authorized by the employee.[24]

The state Supreme Court has held that the

12. Mich LA § 423.509(2).
13. Mich LA § 423.502.
14. Mich LA § 423.502.
15. Mich LA § 423.503.
16. Mich LA § 423.503.
17. Mich LA § 423.504.
18. Mich LA § 423.504.
19. Mich LA § 423.506.
20. Mich LA § 423.507.
21. Mich LA § 423.505.
22. Minn SA § 363.02 subd 1(7)(ii).
23. Minn SA § 181.75 subd 1.
24. Minn SA § 181.76.

above statute does not violate the Constitution.[25]

Montana

¶ EP-21,950. How an employer can use polygraph, voice stress analysis, or similar tests.

No person or business entity may require any person to take a polygraph test or any form of a mechanical lie detector test as a condition for employment or continuation of employment.[1]

¶ EP-21,951. How an employer can use drug or alcohol tests.

No person or business entity may require any person to submit to a blood or urine test as a condition for employment, except employment in hazardous work environments or in jobs the primary responsibility of which is security, public safety, or fiduciary responsibility.[1.1] Similarly, no person or business entity may require any employee to submit to a blood or urine test as a condition for continuation of employment, unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use.[1.2]

Also, prior to the administration of a drug or alcohol test, the employer must adopt a written testing procedure and make it available to all persons subject to testing. This procedure must call for:

(1) collection of each blood or urine specimen in a manner that minimizes invasion of personal privacy while ensuring the integrity of the collection process;

(2)collection of a quantity of specimens sufficient to ensure the administration of several tests;

(3) collection, storage, and transportation of the specimens in tamper-proof containers;

(4) adoption of chain-of-custody documentation procedures identifying how each specimen was handled and tested;

(5) verification of test results by two or more different testing procedures before judging a test positive; and

(6) prohibition of the release of test results, except as authorized by the person tested or as required by a court.[1.3]

An employer may not take any adverse action against a subject of a drug or alcohol test if that person presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.[1.4]

¶ EP-21,952. How the subject of a drug or alcohol test can gain access to the test's results and an opportunity to supply other test results.

Any employer that conducts a drug or alcohol test on an employee or applicant must give a copy of the test results to the person tested and provide him the opportunity, at the expense of the person requiring the test, to obtain a confirmative test by an independent laboratory selected by the person tested. Also, the person tested must be given an opportunity to rebut or explain the results of either or both tests.[1.5]

Nebraska

¶ EP-21,955. Under what conditions can medical information about employees be gathered.

When an employer requests an applicant for employment to submit to a medical examination, the employer must pay the cost of the examination.[2] However, this rule does not apply to the state or any subdivision of the state.[3]

¶ EP-21,956. How an employer can use polygraph, voice stress analysis, or similar tests.

No employer or prospective employer may require, as a condition of employment or continued employment, that a person submit to a truth and deception examination, unless the employment involves public law enforcement.[4] This does not prohibit an employer from asking an employee or applicant to submit to a truth and deception examination if all of certain

25. State v Century Camera, Inc., (1981, Minn) 309 NW2d 735.

1. Mont CA 39-2-304(1)(a).
1.1. Mont CA 39-2-304(1)(b).
1.2. Mont CA 39-2-304(1)(c).
1.3. Mont CA 39-2-304(2).
1.4. Mont CA 39-2-304(4).
1.5. Mont CA 39-2-304(3).
2. Neb RS § 48-221.
3. Neb RS § 48-223.
4. Neb RS § 81-1932.

conditions, such as that questions be job-related, are met.[5]

Nevada

¶ EP-21,960. How an employer can use polygraph tests.

A person or governmental entity that possesses the results of a polygraph examination or information obtained during a polygraph examination required to permit the examinee to obtain or retain employment must not release the results or information without written consent, unless ordered by a court of competent jurisdiction or as otherwise provided by law.[6]

¶ EP-21,960.1. How an employee can gain access to a personnel file.

An employee is entitled upon request, to inspect records containing both information used by an employer to determine the employee's qualifications, and information regarding any disciplinary action taken against the employee. However, an employee is not entitled to review confidential reports by previous employers or investigative agencies or information concerning the investigation, arrest or conviction of the employee for a violation of law.[6.1]

In addition, a discharged employee has the right to inspect his personnel records within 60 days after his termination. An employer must therefore furnish the employee, upon request, with a copy of these personnel records. The employee may be required to pay a fee equal to the actual cost of providing access to any copies of those records.

However, an employer is not required to furnish any copies of records to an employee or former employee unless the employee was employed for more than 60 days.[6.2]

¶ EP-21,960.2. How an employee can correct or remove information from a personnel file.

An employee who believes that any information contained in his personnel records is inaccurate or incomplete, must notify his employer in writing of his contention. If the employer finds that the employee's contention is correct, the employer must change the file accordingly.[6.3]

¶ EP-21,961. How an employer can use information in a personnel file.

It is unlawful to discipline or discharge any employee based on a report by a special agent, detective, or spotter that involves a question of integrity, honesty, or a breach of employer rules, unless the employer gives notice and a hearing to the accused employee, upon request. At this hearing, the accused employee must have the opportunity to be confronted with the person making the report and to furnish testimony in his defense.[7]

5. Neb RS § 81-1932.
6. Nev RS § 648A.260.
6.1. Ch 387, L. 1985 § 2(1).
6.2. Ch. 387, L. 1985 § 2 (2), (3), (4).
6.3. Ch. 387, L. 1985 § 3.
7. Nev RS § 613.160 subd 1.

New Hampshire

¶ EP-21,965. Under what conditions can consumer report information about employees be gathered.

The New Hampshire Fair Credit Reporting Act provides that a consumer reporting agency may furnish a consumer report to any person the agency believes will use the information for employment purposes.[8] An employer may not procure or cause to be prepared an investigative consumer report on any individual, unless clear and accurate disclosure of that fact is made to the individual.[9]

¶ EP-21,966. How an employer can use consumer report information in a personnel file.

Disclosure is required when employment is denied, wholly or partly based on information contained in a consumer report from a consumer reporting agency.[10]

¶ EP-21,967. How an employee can gain access to consumer report contents and recipients.

Within a reasonable period of time after disclosure by an employer that an investigative consumer report has been procured or prepared on any individual, the individual may obtain a complete and accurate disclosure of the nature and scope of the investigation requested.[11] The individual is also entitled to obtain clear and accurate disclosure from any consumer reporting agency regarding the recipients of any consumer report on the individual furnished for employment purposes within the two-year period preceding the request for disclosure.[12]

New Jersey

¶ EP-21,970. How an employer can use polygraph tests.

It is unlawful for an employer, other than one authorized to manufacture, distribute, or dispense narcotics or controlled dangerous substances, to require an employee to take or submit to a lie detector test as a condition of employment or continued employment.[13]

New Mexico

¶ EP-21,975. Under what conditions can credit information about employees be gathered.

In order to obtain information from a credit bureau, an employer must certify that inquiries are made only for the purposes of bona fide business transactions, such as the evaluation of the qualifications of present or prospective employees.[14]

New York

¶ EP-21,980. Under what conditions can information about employees be gathered.

It is an unfair labor practice for an employer to spy on or keep under surveillance any activities of employees or their representatives in the exercise of their protected rights.[15] Furthermore, an employer may not request a consumer report, other than an investigative consumer report, in connection with an employment application, unless the applicant is first informed.[16] If the notice to the applicant indicates that subsequent consumer reports may be requested or utilized, no additional notice is required at the time the subsequent report is requested.[17] In addition, no investigative consumer report on any employee may be procured or caused to be prepared by an employer, other than the employee's present employer, unless notice is given and authorization is obtained from the employee.[18] Refusal to execute the authorization is grounds for declining to grant employment.[19]

Under the New York Fair Credit Reporting Act, a consumer reporting agency may furnish a consumer report to any person the agency believes will use the information for employment purposes.[20]

¶ EP-21,981. How an employer can use a psychological stress evaluator test.

No employer may require, request, or knowingly permit any employee or prospective em-

8. NH RSA 359-B:4 subd I(c)(2).
9. NH RSA 359-B:6 subd I.
10. NH RSA 359-B:15 subd I.
11. NH RSA 359-B:6 subd 2.
12. NH RSA 359-B:9 subd I(c)(1).
13. NJ SA 2C:40A-1.
14. NM SA § 56-3-4.
15. NY CLS Labor Law § 704 subd 1.
16. NY CLS Gen Bus Law § 380-b(b).
17. NY CLS Gen Bus L § 380-b(c).
18. NY CLS Gen Bus L § 380-c.
19. NY CLS Gen Bus L § 380-c(d).
20. NY CLS Gen Bus L § 380-b(a)(3)(II).

ployee to submit to a psychological stress evaluator examination, and no employer may administer or use the results of such a test for any reason whatsoever.[21] Furthermore, it is unlawful for any individual to knowingly administer or participate in the administration of a psychological stress evaluator examination of an employee or prospective employee.[22] In addition, a psychological stress evaluator examination may not be administered within the state to any individual seeking employment outside the state or for the purpose of continuing employment outside the state.[23]

No employee may be discharged, disciplined, or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of the statute regarding psychological stress evaluators.[24]

¶ EP-21,982. How an employee can gain access to the names of recipients of a consumer report.

Any employee may obtain from any consumer reporting agency the names of recipients of any consumer report on the employee that it has furnished for employment purposes within the two-year period preceding the request, upon request and proper identification.[25]

¶ EP-21,983. How an employer can disclose consumer reports to outsiders.

No employer may disseminate a consumer report or an investigative consumer report to any other person unless the other person has a legitimate business need for the information in connection with a business transaction involving the individual concerned in the report.[1]

Ohio

¶ EP-21,985. Under what conditions can medical information about employees be gathered.

An employer may not require any prospective employee or applicant for employment to pay the cost of a medical examination required by the employer as a condition of employment.[2]

¶ EP-21,986. How an employee can gain access to medical records maintained by an employer.

A copy of any medical report pertaining to an employee or former employee must be furnished to the employee upon request, provided that if a physician concludes that presentation of the employee's medical record directly to the employee will result in serious medical harm to the employee, the copy be given to a physician designated in writing by the employee.[3] The employer may charge up to $.25 for each page of a report furnished to an employee.[4]

Oregon

¶ EP-21,990. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to require any person or employee to take a breathalyzer test, polygraph test, or any other form of lie detector test as a condition for employment or continuation of employment,[5] or to directly or indirectly subject any employee or prospective employee to any breathalyzer test, polygraph examination, or psychological stress test.[6] However, an employee may consent to administration of a breathalyzer test, and if the employer has reasonable grounds to believe that an employee is under the influence of intoxicating liquor, the employer may require the administration of a blood alcohol content test by a third party or a breathalyzer test as a condition for employment or continuation of employment. The employee, though, may not be required to pay the cost of any such test.[7]

A polygraph examination can be given to an individual who consents to it during the course of a criminal or civil judicial proceeding in which the person is a party or witness, or during the course of a criminal investigation conducted by a law enforcement agency, a district attorney, or the Attorney General.[8]

21. NY CLS Labor Law § 735 subd 1.
22. NY CLS Labor Law § 734 subd 1.
23. NY CLS Labor Law § 737.
24. NY CLS Labor Law § 736.
25. NY CLS Gen Bus L § 380-d.
1. NY CLS Gen Bus L § 380-*i*(c).
2. Ohio RC § 4113.21.
3. Ohio RC § 4113.23(A).
4. Ohio RC § 4113.23(b).
5. Ore RS 659.225(1).
6. Ore RS 659.227(1).
7. Ore RS 659.225(1), 659.227(5).
8. Ore RS 659.227(4).

¶ EP-21,991. How an employee can gain access to a personnel file.

At the request of an employee, his employer must provide a reasonable opportunity to inspect, at the place of employment or work assignment, those personnel records used to determine qualification for employment, promotion, additional compensation, or employment termination or other disciplinary action, and must furnish a certified copy of the records.[9] A certified copy of personnel records of a terminated employee must be provided to the employee if a request is made within 60 days after termination.[10] An employer may make only such charge as is reasonably calculated to recover the actual cost of providing the service.[11]

¶ EP-21,992. How long an employer should retain the personnel file of a terminated employee.

An employer must keep a terminated employee's personnel records for no less than 60 days after termination.[12]

Pennsylvania

¶ EP-21,995. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to require that an employee or other individual, other than those in the field of public law enforcement or who dispense or have access to narcotics or dangerous drugs, be required to take a polygraph test or any form of a mechanical or electrical lie detector test as a condition for employment or continuation of employment.[13] Furthermore, it is unlawful to use a psychological stress evaluator, audio stress monitor, or similar device to judge the truth or falsity of oral statements without the consent of the person whose statements are being tested.[14]

¶ EP-21,996. How an employee can gain access to a personnel file.

An employee is entitled to inspect his personnel file upon request at reasonable times to determine his own qualifications for employment, promotion, additional compensation, termination, or disciplinary action.[15]

Puerto Rico

¶ EP-21,998. How an employer can use information obtained on an employee's support obligations.

An employer may not reveal, publicize, or instigate the use of any information obtained from an employee for purposes of complying with the local law on income withholding for support.[15.1]

Rhode Island

¶ EP-22,000. Under what conditions can information about employees be gathered.

It is an unfair labor practice for an employer to spy on any activities of employees or their representatives in the exercise of protected rights.[16]

Whenever any employer requires a physical examination prior to employment, the cost of the examination must be paid by the employer, whether or not the prospective employee is hired.[17]

An employer may not obtain a patient's confidential health care information without the written consent of the patient or his authorized representative.[18]

¶ EP-22,001. How an employer can use polygraph tests.

It is unlawful for an employer or its agent, orally or in writing, to request, require, or subject any employee to a lie detector test as a condition of employment or continued employment.[19] However, this rule does not apply to lie detector tests administered by law enforcement agencies in the performance of their official duties.[19.1]

¶ EP-22,002. How an employer can use medical information in a personnel file.

An individual whose employment application

9. Ore RS 652.750(2).
10. Ore RS 652.750(3).
11. Ore RS 652.750.(4).
12. Ore RS 652.750(3).
13. 18 Pa CS § 7321.
14. 18 Pa CS § 7507.
15. 43 P Pa SA §§ 1322-1323.
15.1. 1985, No. 106, § 4.
16. RI GS § 28-7-13(1).
17. RI GS § 28-62-1.
18. RI GS § 5-37.3-4(a).
19. RI GS § 28-6.1-1.
19.1. RI GS § 28-6.1-2.

is denied or whose employment is terminated based solely or partly on confidential health care information is entitled, upon written request, to have copies of the information transfered to a physician designated in the request, though the employer may require payment of its actual cost of retrieval, duplication, and forwarding of the information.[20]

¶ EP-22,002.5. How an employee can gain access to a personnel file.

Beginning January 1, 1987, an employer must permit an employee to inspect certain personnel files under certain conditions. The employee must make a written request to inspect at least seven days in advance (excluding Saturdays, Sundays, and holidays). Also, he has a right to inspect only at a reasonable time other than his work hours and only twice in a calendar year. He may not remove or copy the files, but the employer must supply copies of requested documents at a reasonable fee. The employer or its designee has a right to be present during the inspection.

The right to inspect applies to the personnel files used to determine the requesting employee's qualifications for employment, promotion, additional compensation, termination, or disciplinary action but not to any: (1) records related to investigation of a possible criminal offense; (2) records prepared for use in any civil, criminal, or grievance proceedings; (3) letters of reference; (4) medical records; (5) recommendations; (6) managerial records kept or used only by the employer; (7) confidential reports from previous employers; or (8) managerial planning records.[20.1]

¶ EP-22,003. How an employer can disclose medical records to outsiders.

An employer that receives and retains confidential health care information must establish certain security procedures, such as limiting access to the information.[21]

South Dakota

¶ EP-22,005. How a state employee can gain access to a personnel file.

Any records required or maintained by the Bureau of Personnel, including performance appraisals, that pertain to an employee in the executive branch of state government must be available and open to inspection by the employee during normal business hours.[22]

Tennessee

¶ EP-22,010. How an employee can gain access to a personnel file.

Any certificated or professional school employee is entitled to access to his personnel file at any reasonable time and to a copy of specified documents, on request and on payment of reasonable compensation.[23]

Any state employee, regardless of position or classification, is entitled to have access to his personnel files at any reasonable time and must be furnished copies of any material contained in his file upon request and payment of the cost of reproduction.[24]

¶ EP-22,011. How an employer can use polygraph tests.

An employer may not take any personnel action based solely on the results of a polygraph examination.[24.1]

Utah

¶ EP-22,015. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to conduct a deception detection examination by polygraph, voice stress equipment, or other similar device in a surreptitious manner, without the physical presence of the subject and without the subject being aware of the examination. Furthermore, it is unlawful to use a refusal to submit to such an examination as the basis for denying or terminating employment.[25]

¶ EP-22,016. How a public employee can gain access to a personnel file.

Upon receipt of a written request from a public employee to examine his personnel file, the employer must produce the file for inspec-

20. RI GS § 5-37.3-5(a).
20.1. RI GS § 28-6.4-1.
21. RI GS § 5-37.3-4(c).
22. SD CL 3-6A-31.
23. Tenn CA § 49-2-301(f)(28).
24. Tenn CA § 8-50-108.
24.1. Tenn CA § 62-27-128.
25. Utah CA 34-37-2(5), 34-37-16.

tion and copying.[26] The cost of copying must be paid by the employee.[27] However, the right to examine and copy documents does not extend to those classified as "confidential" under the Utah Information Practices Act.[28]

¶ EP-22,017. How an employer can use drug or alcohol tests.

An employer may test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment. However, the employer and management in general must themselves submit to testing on a periodic basis.[1]

observation: Although the statute's language suggests that drug and alcohol testing of an employer and its managerial staff is mandatory, it is likely that the statute's intent was to require that they be tested only if they impose a testing requirement on rank-and-file employees.

To ensure reliability in the testing procedure, the employer may designate the type of sample to be used for testing, may require samples from his employees and prospective employees, and may require them to present reliable identification to the person collecting the samples.[2] For current employees, the testing must be scheduled for some time during or immediately after the regular work period.[3]

All sample collection and testing must be:

(1) performed under reasonable and sanitary conditions;

(2) conducted with due regard for the privacy of the individual being tested;

(3) reasonably calculated to prevent substitutions or interference with the samples;

(4) documented by the labelling of samples to prevent erroenous identification of test results;

(5) conducted with an opportunity for the employee or prospective employee to provide any information that he considers relevant to the test, including the identity of any prescription or nonprescription drugs he recently used or other relevant medical information;

(6) performed in a manner that reasonably precludes sample contamination or adulteration during collection, storage, and transportation; and

(7) conducted in conformity with scientifically accepted methods and procedures, including verification of any positive test result by gas chromotography, gas chromotography-mass spectroscopy, or other comparably reliable method, before any test results may be used as a basis for any adverse action by the employer.[3.1]

An employer may carry out a testing or retesting program for the presence of drugs or alcohol only within the terms of a written policy that has been distributed to employees and is available for review by prospective employees.[3.2]

This policy may require testing for:

. . . investigation of an individual employee's possible impairment;

. . . investigation of workplace accidents or thefts;

. . . maintenance of safety for employees or the general public;

. . . maintenance of productivity, quality of products or services, or security of property or information.[3.3] Specifically, the testing need not be limited to circumstances where there are indications of individual, job-related impairment.[3.4]

If the employer receives a verified positive drug or alcohol test result indicating a violation of its written policy or if the employee or prospective employee refuses to provide a sample, the employer may:

. . . require the employee to enroll in an employer-approved rehabilitation, treatment, or counseling program, that may include additional drug or alcohol testing, as a condition of continued employment;

. . . suspend the employee with or without pay for a period of time;

. . . terminate the employee;

26. Utah CA 67-18-3.
27. Utah CA 67-18-4.
28. Utah CA 67-18-5.
1. Utah CA 34-38-3.
2. Utah CA 34-38-4.
3. Utah CA 34-38-5(1).
3.1. Utah CA 34-38-6.
3.2. Utah CA 34-38-7(1).
3.3. Utah CA 34-38-7(2).
3.4. Utah CA 34-38-7(3).

However, there are exceptions to the proscriptions against requiring lie detector tests. For example, employees that may require an applicant for employment to submit to a polygraph examination under the law are:

(1) the department of public safety, municipal police departments and county sheriffs, with respect to sworn police officers and deputy sheriffs;

(2) any employer whose primary business is the wholesale or retail sale of precious metals, gems or jewelry;

(3) any employer whose business includes the manufacture or the wholesale or retail sale of regulated drugs provided, however, that the tests are limited to employees who come in contact with such regulated drugs; and

(4) any employer authorized or required under federal law or regulation to administer polygraph examinations.[5.6]

An employer may not discriminate against an employee for his having filed a complaint or otherwise participated in a proceeding regarding the polygraph prohibition.[5.7]

Virginia

¶ EP-22,025. Under what conditions can information about employees be gathered.

It is unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any medical records required by the employer as a condition of employment.[6]

Washington

¶ EP-22,030. How an employer can use polygraph or similar tests.

It is unlawful for any person, business, or the state of Washington, its political subdivisions or municipal corporations, to require any employee or prospective employee to take a lie detector or similar test as a condition of employment or continued employment. This rule does not apply, however, to persons making an initial application for employment with any law enforcement agency, or an initial application for employment or the continued employment of persons who work in manufacturing, distributing, or dispensing controlled substances, or persons in sensitive positions directly involving national security.[7]

¶ EP-22,031. How an employee can gain access to a personnel file.

An employer must make all of an employee's personnel files available locally, at least once a year, within a reasonable time after receipt of an employee's request.[7.1]

An employee is not entitled to review personal records relating to the investigation of a possible criminal offense, or records compiled in preparation for an impending lawsuit if they would not be available under the rules of pretrial discovery in state court.[7.2]

¶ EP-22,032. How an employee can correct or remove information from a personnel file.

Once a year, an employee may request that the employer review all information in the employee's personnel file that is regularly maintained as a business record or that is subject to reference for information given to persons outside of the business.[7.3] An employer, at his own discretion, may remove any irrelevant or erroneous information from the employee's personnel file. If an employee disagrees with his employer's determination, he may submit a statement of rebuttal or correction to be placed in his file.[7.4] A former employee retains the right to rebut or correct information in his personnel file for two years.[7.5]

West Virginia

¶ EP-22,035. How an employer can use polygraph or similar tests.

No employer, other than one authorized to manufacture, distribute, or dispense drugs (excluding ordinary drugs), law enforcement agencies, or state military forces, may require or

5.6. 21 Vt SA § 494b.
5.7. 21 Vt SA § 494d.
6. Va C § 40.1-28.
7. RC Wash 49.44.120.
7.1. Ch. 336, L. 1985 § 1, 2.
7.2. Ch 336, L. 1985 § 3.
7.3. Ch. 336, L. 1985 § 2(2).
7.4. Ch 336, L. 1985 § 2.
7.5. Ch. 336, L 1985 § 2(3).

request, either directly or indirectly, that any employee or prospective employee submit to a polygraph, lie detector, or similar test. In addition, no employer may knowingly allow the results of any such test administered outside the state to be used to determine whether to employ a prospective employee or to continue the employment of an employee in the state. However, the results of any examination that is authorized may be used solely for the purpose of determining whether to employ or to continue to employ any person exempted.[8]

Wisconsin

¶ EP-22,040. Under what conditions can information about employees be gathered.

It is an unfair labor practice for an employer to employ any person to spy on employees or their representatives with respect to the exercise of any protected rights.[9]

¶ EP-22,041. How an employer can use polygraph, voice stress analysis, or similar tests.

No employer may directly or indirectly require or administer a polygraph, voice stress analysis, psychological stress evaluator, or any similar test purporting to test the honesty of any employee or prospective employee. Further, no person may sell to or interpret for an employer a test known to have been solicited or required by an employer. An employee that requests such a test must be informed that taking the test is voluntary.[10] However, these rules do not apply to the use of an instrument that, at a minimum, is capable of recording visually, permanently, and simultaneously indications of a person's cardiovascular pattern and its changes and a person's respiratory pattern and its changes.[11] Finally, any agreement offering employment or any pay or job benefit in return for taking a test is void.[12]

If a permitted test is given, statutory procedures, such as informing the test subject of all his rights, must be followed.[13] No disciplinary action may be taken or employment decision made that is based on the results of a permitted test, unless the employer has relevant evidence or information, obtained independently from the permitted test, tending to support the test results, or based on the refusal of the employee to take the test.[14]

In the absence of a valid and voluntary written agreement, any person can refuse to disclose any oral or written communication during, or any result of, an examination using an honesty-testing device.[15] Such a test may not be given, and the giving of the test may not be disclosed, without prior written informed consent.[16]

¶ EP-22,042. How an employee can correct or remove information from a personnel file.

If an employee disagrees with information contained in personnel records, a removal or correction of that information may be mutually agreed on by the employer and employee. However, if no agreement can be reached, the employee may submit a written statement explaining his position. This statement will be attached to the disputed portion of the employee's personnel record.[17]

¶ EP-22,043. How an employee can gain access to personnel records.

Upon the request of an employee, which the employer may require to be made in writing, every employer must permit the employee to inspect any personnel documents used in determining the employee's qualifications for employment, promotion, transfer, additional compensation, termination, or other disciplinary action. At least two requests must be granted in a calendar year in the manner required by statute, unless otherwise provided in a collective bargaining agreement.[18] An employee involved in a current grievance may designate in writing a representative of a union, collective bargaining unit, or other representative to inspect the employee's personnel records that may have a bearing on the resolution of the grievance.[19]

The right to inspect personnel records in-

8. W Va C 21-5-5b.
9. Wisc SA 111.06(j).
10. Wisc SA 111.37(1)(a).
11. Wisc SA 111.37(1)(b).
12. Wisc SA 111.37(2).
13. Wisc SA 111.37(3).
14. Wisc SA 111.37(4).
15. Wisc SA 905.065.
16. Wisc SA 942.06.
17. Wisc SA 103.13(4).
18. Wisc SA 101.13(2).
19. Wisc SA 103.13(3).

cludes medical records concerning the employee, though if the employer believes that disclosure of medical records would have a detrimental effect on the employee, the medical records may be released to the employee's physician or through a physician designated by the employee. In that case, the physician may release the medical records to the employee or his immediate family.[20]

The right to inspect personnel records does not apply in certain instances, such as letters of reference or records relating to the investigation of possible criminal offenses,[21] but does include the right to copy or receive a copy of records, provided the employer may charge a reasonable fee not to exceed the actual cost of reproduction.[22]

¶ EP-22,045. How an employer can disclose personnel records to outsiders.

If an employee submits a written statement explaining his position in regard to any disputed portion of his personnel record, the statement must be attached to the disputed portion of the record and included whenever it is released to a third party for as long as it is a part of the file.[23]

20. Wisc SA 103.13(5).
21. Wisc SA 103.13(6).
22. Wisc SA 103.13(7).
23. Wisc SA 103.13(4).

Bill No. House Bill 86

Date January 30, 1989

Title "An Act requiring employers to permit employees and former employees to have access to their personnel files."

Contact: Tom Stuart
264-2452
Eileen Plate
465-2700

House Bill 86 requires employers to provide an employee or former employee access to his or her respective personnel records and to permit the employee to make copies of the records. The employer may charge the employee for the costs of duplicating the records.

Employees should have access to employer kept personnel records as provided in this bill. The accuracy of such records may have a direct bearing on a worker's employability should a prospective employer contact the worker's current or former employer as a reference. Under the provisions of this bill, a worker would have an opportunity to at least be aware of any discrepancies in the employer's personnel records.

The Department supports the provisions of this bill which provide workers a right to access and copy employer kept personnel records.

House Bill 86 would not have a fiscal impact on the Department of Labor.

APPROVED

Jim Sampson
Commissioner

POSITION PAPER/Department of Labor

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 86
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Agency Affected: Labor
Title: "An Act requiring employers to permit ...access to ...personnel files."
BRU: Labor Standards & Safety
Sponsor: House Labor & Commerce
Components: Wage & Hour
Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Tom Stuart by PD

Prepared by: Tom Stuart, Director
Phone: 465-2725
Division: Labor Standards & Safety
Date: 1/26/89

Approved by Commissioner: Jim Sampson
Date: 1/26/89
Agency: Department of Labor

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

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M February 13, 1989

SUBJECT: Scope of HB 86
(Access to personnel files)

TO: Representative Dave Donley

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked whether HB 86 requires an employer to keep personnel files on employees. In my opinion, the answer is no. Under subsection (a), if an employer maintains personnel files, the employer must allow access to the information. There is nothing that affirmatively requires that the information be maintained in the first place.

If I may be of further assistance, please advise.

TC:kb
wkk1/119

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling

P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senator Pat Pourchot, Chairman

RE: March 20 Committee Meeting

DATE: March 20, 1989

Today at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SB 173, An Act relating to municipal petitions and elections, and to appointments to fill certain municipal offices
SB 173 makes a number of clarifications to the statutes governing municipal petitions and elections. The bill was developed at the request of the Alaska Municipal League.

In general, SB 173 standardizes petition procedures, requires that a prime sponsor be designated on petitions, establishes a 30-day registration requirement for voting in municipal elections, provides special initiative requirements for ordinances that affect only part of a municipality, and prohibits appointment of a recalled official to fill the vacancy created by the recall.

The Community and Regional Affairs Committee adopted a committee substitute containing two changes recommended by the Division of Elections. Specifically, Sec. 7 of the CS amends the voter qualification statute to conform with the requirement in Sec. 8 that a voter be registered at a residence address within the municipality 30 days prior to a municipal election. Sec. 9 of the CS authorizes a municipality to require that a voter whose registration has been cancelled for non-activity reregister before voting.

HB 86, An Act requiring employers to permit employees and former employees to have access to their personnel files
HB 86 would require both private and public employers to provide employees access to their personnel records. Employees could make copies of their records and would pay for the cost of copying. HB 86 would not supersede any collective bargaining agreements.

According to House Research, 13 other states and the District of Columbia have similar statutes.

H B 87

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER HB 87

SPONSOR Governor

BILL TITLE Long-term financial plan.

DATE REFERRED 4-11-89

HEARING SCHEDULED 5-3-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED Shari 3500

INTERESTED PARTIES CONTACTED

✓ Mary Halloran, OMB 3568
Jack Fargnoli
Alison Elgee

Katharine, Rep. Davis 4930
support O+M (CIP) costs

OTHER

Amended: 4/7/89 go1019hJ

Offered: 3/21/89
Referred: Rules

Original sponsor: Rules/Governor

Sandia bill versions

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 87 (Finance) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the state budget and to long-term financial plans for the state; and providing for an effective date."

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

* Section 1. AS 37.07.020(b) is amended to read:

(b) In addition to the budget and general appropriation bill, the governor shall submit a long-term [CAPITAL IMPROVEMENTS PROGRAM AND] financial plan. The long-term financial plan must include estimates of expenditures, estimates of annual revenue from all sources, and recommendations for sources of revenue. The long-term financial plan must include projections of estimated expenditures covering the six succeeding [SIX] fiscal years and projections of revenue for the 10 succeeding fiscal years. (Gov)

originally 20 St Aff → 10 Fin → 10

* Sec. 2. AS 37.07.020(c) is amended to read:

(c) Proposed expenditures may not exceed estimated revenue for the succeeding fiscal year. The expenditures proposed in the long-term [SIX-YEAR CAPITAL IMPROVEMENTS PROGRAM AND] financial plan may not exceed the estimated revenue and bond authorizations passed and proposed.

* Sec. 3. AS 37.07.030 is amended to read:

Sec. 37.07.030. RESPONSIBILITIES OF THE LEGISLATURE. The legislature shall

(1) provide for a budget review function;

(2) analyze the comprehensive operating and capital im-

provements programs and long-term financial plan [PLANS] recommended by the governor;

(3) adopt legislation to authorize implementation of the governor's comprehensive operating and capital improvements budget [PROGRAMS AND FINANCIAL PLANS] or appropriate alternatives to that budget [THOSE PLANS];

(4) provide for a post-audit function to cover financial transactions, program accomplishment, and compliance with legislative intent;

(5) adopt or revise the estimate of receipts required to balance the succeeding fiscal year's budget in order that proposed expenditures do not exceed estimated receipts for that fiscal year;

(6) adopt, revise, or initiate revenue measures in order to balance the succeeding fiscal year's budget and the capital improvements section of the budget for the succeeding six years;

(7) adopt or revise the long-term financial plan annually submitted by the governor.

concurrent resolution approve

* Sec. 4. AS 37.07.060 is amended to read:

Sec. 37.07.060. GOVERNOR'S RECOMMENDATION. (a) The governor shall formulate the long-term [OPERATING AND CAPITAL IMPROVEMENTS PROGRAMS AND] financial plan [PLANS] required to be recommended to the legislature by AS 37.07.020 after considering the state agency proposed program and financial plan [PLANS], and other programs and alternatives that the governor considers appropriate. The plan [PLANS] must include the governor's recommended goals and policies, recommended plans to implement the goals and policies, recommended operating and capital improvement program for the succeeding six 5 fiscal [YEAR, RECOMMENDED CAPITAL IMPROVEMENTS PROGRAM FOR THE SUCCEEDING SIX FISCAL] years, recommended programs for the upgrading of

STAFF 4

public buildings and facilities prepared in accordance with AS 35.10.-015, and recommended revenue measures to support the programs.

(b) The governor shall present the proposed budget [COMPREHENSIVE OPERATING AND CAPITAL IMPROVEMENTS PROGRAMS] and long-term financial plan [PLANS] in a message to a joint session of the legislature before the fourth legislative day following the convening of the legislature in regular session. The message must be accompanied by an explanatory report that summarizes recommended goals, plans, and appropriations. The report must contain

(1) the coordinated program goals and objectives that the governor recommends to guide the decisions on the proposed program plans and budget appropriations;

(2) the governor's operating program and budget recommendations for the succeeding fiscal year organized by agency as required by AS 37.07.020(a);

(3) the governor's capital improvements program and budget recommendations for the six succeeding fiscal [YEAR AND CAPITAL IMPROVEMENTS PROGRAM FOR THE SUCCEEDING SIX FISCAL] years, that [WHICH] must include

(A) a description of each project, the estimated annual maintenance and operation costs for the useful life of the project, its estimated cost for the year construction is to start and the estimated cost of the project adjusted for inflation over the estimated period of construction, and the source of financing for the project; the project description for a new building or a new facility or for a major addition to a building or facility should include a site plan, preliminary drawings, and architect's or engineer's total cost estimate for the project;

(B) a summary of projects previously authorized and

not yet completed;

(C) a summary, listed by agency, of all previously proposed projects that have been deferred beyond the period [SIX YEARS] covered by the plan and the year in which construction has been rescheduled to begin;

(D) a forecast of the debt structure of the state and the various debt ratios over the life of the state's bonds outstanding, bonds authorized and to be issued, and bond authorizations recommended in the plan;

(E) a description of additional revenue measures needed to finance the plan in lieu of debt;

(F) bond election bills to authorize the bonds required to fund the projects scheduled for the first three years of the plan;

(G) projections of population of the state and its regions and communities;

(H) economic data and projections necessary for the evaluation of the plan;

(4) a summary of state receipts in the last fiscal year, a revised estimate for the current fiscal year, and an estimate for the succeeding fiscal year;

(5) a summary of expenditures during the last fiscal year, those authorized for the current fiscal year, and an estimate for the succeeding fiscal year;

(6) any additional information that will facilitate understanding of the governor's proposed programs and long-term financial plan [PLANS] by the legislature and the public.

* Sec. 5. AS 37.07.070 is amended to read:

Sec. 37.07.070. LEGISLATIVE REVIEW. The legislature shall

consider the governor's proposed long-term [COMPREHENSIVE OPERATING AND CAPITAL IMPROVEMENTS PROGRAMS AND] financial plan [PLANS], evaluate alternatives to the plan [PLANS], make program selections among the various alternatives and determine, subject to available revenues the level of funding required to support authorized state services. The operating and capital budgets of each agency shall be separately reviewed. During each regular session of the legislature, legislative review of the governor's supplemental appropriation bills and the governor's budget amendments shall be governed by the following time limits:

(1) requests [REQUESTS] by the governor for supplemental appropriations for state agency operating and capital budgets for the current fiscal year may be introduced by the rules committee only through the 30th legislative day; [.]

(2) requests [REQUESTS] by the governor for budget amendments to state agency budgets for the budget fiscal year may be received and reviewed by the finance committees only through the 60th legislative day.

* Sec. 6. This Act takes effect July 1, 1989.

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling

P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senator Pat Pourchot, Chairman

RE: May 3 Committee Hearing

DATE: May 2, 1989

On Wednesday, May 3 at 1:30 p.m. in the Beltz Room the following bills will be back before the Senate State Affairs Committee:

SB 154, An Act relating to equipment lease-financing and authorizing a master equipment lease-financing project

SB 154 would authorize the Alaska State Building Authority to finance and acquire equipment for lease to the state. Individual lease-purchases from all state agencies would be consolidated into one or more "master leases". The advantage would be a reduction in interest cost.

At our earlier hearing on SB 154, there was concern that savings realized by state agencies through a master lease not be spent on other agency budget items, but used to reduce agency budgets. Attached is an amendment that would require the Department of Administration to annually report lease savings to the legislature on an agency-by-agency basis, thus allowing the legislature the opportunity to reduce agency budgets accordingly.

SB 157, An Act relating to imposition of a civil fine for violation of a statute, regulation, or ordinance related to alcoholic beverages

SB 157 would authorize the Alcohol Beverage Control Board to assess civil fines against liquor licensees who violate liquor laws. As introduced, the bill did not specify the amount of the fines, leaving fine setting to the sole discretion of the board.

Attached is an amendment which would require the ABC Board to establish a schedule of fines in regulation, and would limit any fine to the greater of $100,000 or an amount which is three times the pecuniary gain realized by the licensee as a result of the violation. This is patterned after the existing provision in Alaska's criminal code regarding fines.

In addition, the following bills will be heard:

HJR 19am, Ratifying an amendment to the Constitution of the United States concerning the compensation of members of the United States Congress

HJR 19 would ratify an amendment to the U.S. Constitution that would disallow any increases in pay for members of Congress from going into effect until after an intervening election had taken place. The amendment was proposed in 1789 and to date has been ratified by 26 states. To become effective, it must be approved by 38 states.

CSHB 83(Fin), An Act relating to legal holidays; and establishing Martin Luther King, Jr., Day as a legal holiday

HB 83 would establish the third Monday of January, known as Martin Luther King, Jr.'s Birthday, as a legal holiday. Lincoln's and Washington's birthdays would be combined on the third Monday in February as President's Day. This would result in an observance for Dr. King without the addition of another paid day of leave.

The bill also provides that King's birthday would be a legal holiday for state employees only if provided for in their collective bargaining agreements.

Martin Luther King Day was statutorially established as a day of commemoration in 1982. Governor Cowper issued a proclamation in January 1989 designating it a legal holiday for this year.

CSHB 87(Fin)am, An Act relating to the state budget and to long-term financial plans for the state

HB 87 would require that the Governor annually submit to the legislature a long-term financial plan. The plan must include projections of expenditures for the next six fiscal years and projections of revenues for the next ten fiscal years. The legislature would be required to adopt or revise the plan.

In addition, HB 87 would require that the Governor's annual capital improvements proposal include the estimated annual mainatenance and operation costs for the useful life of each project.

STEVE COWPER
GOVERNOR

cc
1/17 87

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 17, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

House = 6 yrs.

Dear Representative Cotten:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill requiring the governor to formulate a long-term financial plan for the state. In my State of the State address I said that I would be introducing a bill to formally establish a long-term financial planning process for the state. This process would require us to look forward five fiscal years in formulating the state budget. It would also require the governor to develop and present annual revenue projections for the succeeding 20 fiscal years. Through this process, I hope that we will be able to divert our attention from short-term solutions and develop a stable long-term plan for financing the public services provided by the state.

I urge your favorable action on this bill.

House = 10 yrs

Sincerely,

Steve Cowper
Governor

No. 1

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 87
PUBLISH DATE: HOUSE 1/17/89

FISCAL NOTE

REQUEST:

Revision Date:
Title: ...Gov. formulate/submit long-term financial plan for state
Sponsor: Rules
Requestor: Governor

Agency Affected: Office of Governor
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Alison M. Elgee, Director
Phone: 465-3568
Division: Budget Review
Date: 1/13/89

Approved by Commissioner: Tamara Brooks
Date: 1/14/89
Agency:

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

Kay Brown

Alaska State Legislature
House of Representatives

TO: Representative Lyman Hoffman, Co-Chair
Representative Ron Larson, Co-Chair
House Finance Committee

FROM: Representative Kay Brown

DATE: March 20, 1989

SUBJ: HB 87/Long-Term Financial Plans

The Fiscal Policy Subcommittee has reviewed HB 87 concerning the state budget and long-term financial plans. Please find attached a proposed Finance Committee substitute (work draft dated 03/09/89).

The subcommittee suggestions incorporated into this work draft include the following changes from the State Affairs CS:

- In order to be consistent with capital budget planning process, the time frame for projection of estimated expenditures is changed to six years rather than four. (Note: This change occurs in several places throughout the bill.)

- In order to make clear that the legislature may modify the Governor's proposed budget, the phrase "or appropriate alternatives to that budget" (page 2, lines 3 - 6) is added.

- A requirement that the legislature "adopt or revise" the long-term financial plan annually (page 2, lines 16 -17) is added.

- A requirement that "the estimated annual maintenance and operation costs for the useful life" of capital projects be included in the

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During Session:
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Juneau, AK 99811
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Governor's six-year capital improvements budget (page 3, lines 20 - 22) is added.

- The title of the bill has been modified and other minor changes incorporated as suggested by Tamara Cook in her memo of February 23, 1989.

If you have any questions regarding these proposed changes, please let me know.

cc: Representative C. E. Swackhammer
Representative Steve Rieger

Alaska State Legislature

House of Representatives
COMMITTEE ON STATE AFFAIRS

TO: Representative Lyman Hoffman
Representative Ron Larson
House Finance Committee

FROM: Representative H.A. "Red" Boucher, Chair
House State Affairs Committee

DATE: February 23, 1989

RE: CSHB 87(SA): Long-Term Financial Planning

I would like to refer your attention to the memorandum dated 2/23/89 from Tamara Cook regarding suggested changes to CSHB 87(SA). I support these changes and request that you give them favorable consideration.

Room 102 Capitol Building, P.O. Box V, Juneau, Alaska 99811 (907) 465-4931

Item 5

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 23, 1989

SUBJECT: Long-term financial plan for the state (CSHB 87(SA))

TO: Representative H. A. "Red" Boucher, Chair
House State Affairs Committee

FROM: Tamara Brandt Cook TBC
Director
Division of Legal Services

Here is the committee substitute you requested for HB 87, originally introduced by the Governor. Since the bill has been passed from committee, Dennis Burns requested no changes other than those acted upon by the committee and identified to me. We did make form and style changes in accordance with the drafting manual.

It seems to me, however, that the provision contained in existing law (AS 37.07.030(6)) appearing in section 2 of the bill may need to be changed from six to four years to conform to the change made in section 1 of the bill. The changes made in sec. 1 need to be reflected in AS 37.07.-020(c) and 37.07.040(2), which are not now dealt with in the bill.

In addition, I am concerned that the title may not adequately reflect the contents of the bill. The title is very narrow and addresses only the Governor's responsibilities with respect to the long-term financial plan. Sections 2 and 4 of the bill, though, deal with the legislature's responsibilities. To the extent that those sections are determined not to contain substantive changes, the existing title may be sufficient. But I fear that the changes to those sections may be substantive. If the additional change is made to section 2, altering the six to four years, and to the other nonconforming sections a title change will clearly be required.

I suggest that you make this memorandum available to the next committee of reference, so they can look into these matters.

TBC:kb:gc
wkk2/042

Enclosure

HB 87 LONG TERM FINANCIAL PLAN FOR THE STATE

TO TESTIFY

ALISON ELGEE, O.M.B.

F.Y.I.

GOVERNOR INTRODUCED WITH A 5-YEAR EXPENDITURE PLAN AND A 20-YEAR REVENUE PROJECTION.

HOUSE STATE AFFAIRS AMENDED TO A 4-YEAR EXPENDITURE PLAN (TO CONFORM WITH THE GOVERNOR'S TERM OF OFFICE, WHICH OF COURSE WOULD ONLY MAKE SENSE FOR THE PLAN HE SUBMITTED HIS FIRST YEAR IN OFFICE...) AND A 10-YEAR REVENUE PROJECTION.

HOUSE FINANCE AMENDED TO A 6-YEAR PLAN (TO CONFORM WITH THE CURRENT 6-YEAR CAPITAL IMPROVEMENT PLAN) AND A 10-YEAR REVENUE PROJECTION. GOVERNOR HAS NO PROBLEM WITH THE HOUSE FINANCE BILL.

HOUSE FINANCE ALSO ADDED INCLUSION OF ESTIMATED O&M COSTS FOR EACH CAPITAL PROJECT. ALISON SAYS ADMINISTRATION DOES ALREADY -- IT'S THE LEGISLATIVELY SPONSORED PROJECTS THAT LACK THIS INFORMATION....

ORIGINAL BILL CALLED ON THE LEGISLATURE TO APPROVE OR REVISE THE GOVERNOR'S PLAN BY CONCURRENT RESOLUTION. CURRENT VERSION SIMPLY SAYS APPROVE OR REVISE -- WHAT WOULD THE MECHANISM BE? JUST THE NORMAL BUDGET PROCESS?

SENATE COMMITTEE REPORT

FURTHER FIN

DATE TURNED INTO OFFICE 5-4-89

4/11/89

Mr. President:

STATE AFFAIRS Committee considered CSHB 87 (FIN) am

state budget and to long-term financial plans for the state; efd

and recommended

[ ] replace with ___ CS_____)[] same title
[ ] or adopt _____ CS_____)[] new title
[] technical title change (HB only)

[ ] attached amendment(s) and

[ ] _____letter of intent adopted

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to _____

FISCAL NOTE(S) [ ] zero [ ] fiscal impact [ ] appropriation no FN
[ ] new [ ] updated [ ] previous
[ ] same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

Tim Kelly

Jan Faith

OTHER RECOMMENDATIONS

Pat Lawlis

Chairman signature and recommendation

[ ] Committee Backup attached

H B

91

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER CSHB 91 (Jud)

SPONSOR L & C Committee

BILL TITLE "Whistle-blowing" protection

DATE REFERRED 3-23-89

HEARING SCHEDULED 4-19-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED Ginger 3892 ✓

INTERESTED PARTIES CONTACTED

✓ Dave Otto, DOA 4430

✓ Duncan Fowler, Ombudsman 4970

✓ Jamie Bollenbach, ACLU 586-2701 Jnu

✓ Pat Smuts, AFL-CIO 463-3738 463-2568

Duncan will contact Foster Parents Association, Frank Wasmer

Ginger has resolution Anch. Muni. Assembly - resolution supporting

✓ Bob Manners, NEA 586-3090

Larry Wood, Railroad 265-2461

Michael Mills, MOA Ombudsman 343-4461

Joe Griffith

Hayden 4926

OTHER passed House 2x, Senate 2x - in for 8 yrs.

Terry Cramer

Ombudsman

Position Paper
CSHB 91 (Jud)
Whistle Blowers Protection

The Office of the Ombudsman strongly supports the passage of HB 91 as a positive effort to improve the administration of Alaska's government. This office worked with the House Judiciary Committee in the development of its committee substitute and concur with its provisions. This bill will provide better protections for Alaskans who seek to correct problems with state and local governments.

Whistle Blowers protection is not a new concept to Alaska Law. Last year, the Alaska Legislature again embraced the concept through the adoption of the act creating the Long Term Care Ombudsman (2ch 108 SLA 1988). This act covers not only state-operated long term care facilities but private facilities and landlords and contractors who may take retaliatory actions against someone making a complaint. State labor law (AS 23.10.135) provides for penalties to any employer who "discharges or in any other manner discriminates against an employee because the employee has filed a complaint . . ." relating to the Wage and Hour Act.

The Federal Civil Service Reform Act of 1979 originally created Whistle Blower protections for federal employees. This past month it was revised with new "teeth" and signed into law by President Bush. There had been concerns that not enough employees had been protected by the previous act. The revision allows the Office of Special Counsel (OSC) to stop or postpone detrimental personnel actions which may be retaliatory to federal employees. It also prevents disciplinary actions being taken during the course of an investigation. The Federal Merit System Protection Board reviews the actions of the OSC and provides time extensions for the protections.

The Ombudsman's Interest

The Ombudsman Act requires that the confidentiality of the names of complainants and witnesses involved in an investigation "except insofar as disclosures may be necessary . . . to support recommendations" be maintained. The act also provides a maximum penalty of $1000 for a person who "willfully hinders the lawful actions of the ombudsman". The Ombudsman Act does not provide protections to those citizens, including state employees, who may either complain in good faith or provide testimony regarding one of our investigations.

This is an important issue for the Office of the Ombudsman. Lack of such protections has caused many citizens to withdraw apparently justified complaints when it became necessary for the ombudsman to release their names in order to "prove" information. Citizens have claimed to have not been hired for state jobs because of complaints made to the ombudsman. Several have claimed to have lost housing and other benefits because they complained. I have heard stories of people who believe that if they complain to the ombudsman they will lose a state benefit.

Few, if any, of these citizens would dare testify before the legislature in support of this measure because of their perceived fear of retaliation.

Complaints to the Ombudsman Covered

It is not unusual for my office to receive calls from potential complainants who first ask "Do you offer Whistle Blower protection?" More often than not, even after we explain our confidentiality provisions, the citizen will either just hang up or refuse to let the issue be further pursued.

Lack of such protection generates anonymous letters with allegations describing various degrees of abuses of the public trust being sent to my office. Such letters cause a dilemma. Some letters are clearly "poison pen" letters intended as revengeful acts. Others are honest attempts to cause an investigation of an action the author perceives as improper. In these cases, the author is clearly afraid of retaliation either by an agency or a supervisor.

As a matter of policy, my office does not pursue anonymous complaints. On rare occasions, I do consider an ombudsman initiated complaint (as allowed by the Ombudsman Act) if solid evidence is offered and there is opportunity for third party verification of the allegation. I believe the passage of a measure offering adequate Whistle Blowers protection would reduce the number of anonymous complaints received by the Office of the Ombudsman.

I was involved with a situation when an employee was fired from a position with a public agency for complaining to the ombudsman about fraud and mismanagement. The agency, after becoming aware of the complaint, conducted an internal investigation and created a reason for dismissing our complainant. As a result, our complainant, who was a specialized professional and head of a household, was unemployed for a 2 1/2 year period. It appeared many potential employers wondered why the termination occurred and would not offer the person a position. The family was forced to seek help from Public Assistance. After filing a civil suit and suffering through prolonged negotiations, a settlement was reached.

I believe had HB 91 been enacted at that time, the public employer may not have terminated that employee. The Alaskan and family involved paid dearly for doing what a responsible citizen should do -- ake a legitimate complaint to this office about governmental fraud. This person is not able to present testimony to you about the situation. They believe their settlement prevents such action.

Managers of that public agency were later prosecuted for their management abuses.

Witness Protection

Over the past several months, my office has received a number of complaints alleging misconduct on the part of office supervisors. It has been necessary to depose several of the staff in those offices. As often as not, clerk's or other staff in lower pay ranges are deposed. They often have witnessed -- or have information on -- incidents of misconduct. I have had them report overhearing conversations where the supervisor being investigated believed the "clerk" was my complainant. The supervisors made comments they were going to "get" them for causing the "trouble".

In these complaints I issue subpoenas to provide witnesses a "legal excuse" for providing sworn testimony to my investigators. Despite the state's requirement for the witness to "tell the truth" there is little real protection for them when the witness returns to the work-place. There is an equity problem when a complaint may be found to be technically "unsupported" but later detrimental personnel actions are taken against employees who have provided what may have been embarrassing testimony involving their supervisor.

Protection from Specious Complaints

Few argue the soundness of setting a public policy which protects those with the courage to come forward to "Blow the Whistle" on government officials who are abusing their position. After all, it is those within the government who are often the first to become aware of such abuses. This kind of legislation does create concern on the part of managers however. It is the fear that "bad" employees, or those about to be justifiably terminated, will file false charges in order to become sheltered by the protections of a "Whistle Blowers Act."

The House Committee substitute handles that problem well. It provides that matters **accepted for investigation** by the Office of the Ombudsman be considered a "matter of public concern" and subject to the protections of the act. This essentially requires the ombudsman perform a preliminary screening of a complaint and make a positive decision to accept it for investigation before the protections would take effect. This, in effect, prevents abuse by the filing of a last minute specious complaint with the ombudsman.

Section 39.90.110 of the measure also sets out other limitations for protections under the act. It should be noted that persons are required to make the complaint in good faith and, if an employee. must submit a written report to the employer concerning the matter. Employees are not required to file written reports if they reasonably fear reprisals or if an emergency exists.

H91POOP.TXT
4/21/89

HB 91 WHISTLEBLOWER ACT

TO TESTIFY

REP. DONLEY, SPONSOR (GINGER)

DAVE OTTO, PERSONNEL, HAS BEEN NOTIFIED

F.Y.I.

C.S. MAKES 2 CHANGES:

EXEMPTS FROM COMPLIANCE WITH THE LAW MUNICIPALITIES THAT BY ORDINANCE ADOPT SUBSTANTIALLY SIMILAR PROTECTIONS. "SUBSTANTIALLY SIMILAR" WOULD ULTIMATELY BE DETERMINED BY A COURT IF THE ISSUE WERE EVER RAISED. (PAGE 3, LINES 22-28)

EXEMPTS THE RAILROAD (PAGE 4, LINE 6). CURRENT STATUTE (AS 42.40.710) SAYS "EMPLOYEES OF THE RAILROAD ARE NOT EMPLOYEES OF THE STATE". WE DON'T NEED TO SPECIFICALLY SAY THAT RAILROAD EMPLOYEES ARE EXEMPT BECAUSE THAT SAME STATUTE SAYS "THE PROVISIONS OF AS 39 (THE SECTION WE'RE AMENDING IN HB 91) DO NOT APPLY TO EMPLOYEES OF THE RAILROAD".

THE RAILROAD IS STILL INCLUDED IN THE DEFINITION OF "PUBLIC BODY" PER THE BILL DRAFTER. THIS MEANS THAT IF A NON-RAILROAD EMPLOYEES DISCLOSES SOMETHING TO THE RAILROAD CORPORATION, THEY WOULD BE PROTECTED BY HB 91 (FOR EXAMPLE, A D.O.T. EMPLOYEE WHO TESTIFIES ABOUT A RAILROAD ACCIDENT).

GINGER WILL PROVIDE INFO. ON OTHER STATES. SHE SAYS FEDERAL LAW REQUIRES WHISTLEBLOWER PROTECTION FOR O.S.H.A. MATTERS AND FOR REPORTS TO THE SENIOR CITIZEN OMBUDSMAN. MANY OTHER STATES DON'T HAVE WHISTLEBLOWER STATUTES, BUT RELY ON COMMON LAW AND CASE LAW.

KELLY REQUESTED A COURTS FISCAL NOTE -- ITS ZERO; IN PACKET.

BILL GOES TO JUDICIARY COMMITTEE NEXT. FAIKS HAS SCHEDULED PENDING REFERRAL.

Faiks has said she'll help on floor.

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling

P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Senator Pat Pourchot, Chairman

RE: April 19 Committee Hearing

DATE: April 18, 1989

On Wednesday, April 19 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SB 252, An Act exempting amounts held in the judicial retirement system from execution

SB 252 would protect from execution or attachment funds held in the Judicial Retirement System. Current law provides such an exemption for funds in the Teachers' and Public Employees' Retirement Systems. The current statutory exception to protection for payment of child support would apply.

A draft committee substitute, prepared at the sponsor's request, would provide the same protection from execution for funds held in the elected public officers' retirement system.

CSHB 91(Jud), An Act relating to protection for certain public employees and other persons who report or participate in a proceeding connected with a matter of public concern

HB 91 would prohibit public employers from discharging, threatening, or otherwise discriminating against employees who disclose information of public concern before a public body. The protection would apply only if the disclosure is made in good faith. A violation of the provision would be punishable by a civil fine of not more than $10,000.

The bill would apply to employees of the state, the federal government, political subdivisions including municipalities and school districts, the University, and public corporations including the Alaska Railroad.

Similar "whistle blower' protection exists on the federal level and under Alaska's long term care ombudsman law.

CSHB 138(Fin), An Act establishing a state employee incentive award system

HB 138 would establish an Incentive Awards Board in the Department of Administration to authorize payment of cash awards to state employees who make superior contributions to the efficiency and economy of state operations. The contribution must result in a net savings to the agency and must have been developed outside normal working hours. The bill establishes a formula for calculating the amount of the award, to a maximum of $25,000.

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen, Rick Uehling

P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Senator Pat Pourchot, Chairman

RE: April 21 Committee Hearing

DATE: April 21, 1989

On Friday, April 21 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SJR 18, Proposing an amendment to the Constitution of the State of Alaska relating to income from the permanent fund

SJR 18 would amend the Constitution to specify that income of the permanent fund may be appropriated only for dividends, to the fund principal, for administrative costs of the fund, and for other purposes that a majority of the legislature and the voters approve.

A draft committee substitute that makes the following changes has been prepared:

1) Provides for a 2/3, rather than a 3/4, majority vote by the legislature.

2) Requires that the public renew its approval of SJR 18 every six years.

SB 214, An Act making a special appropriation to the principal of the permanent fund

SB 214 would appropriate the balance in the earnings reserve account of the permanent fund to the principal of the fund. The current balance is approximately $604 million.

IN ADDITION, THE FOLLOWING BILLS WILL BE BACK BEFORE THE COMMITTEE: