

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

7694 SENATE STATE AFFAIRS

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Burden to Minimize Loss	Business owner is required to take steps that a reasonably prudent person would take and adopt to preserve goodwill.	No duty or burden is placed on business owner to minimize loss.
Duplicate compensation	Duplication of compensation is prohibited.	Duplication of payments is not prohibited and perhaps probable, given overlap of various types of losses to be recompensed.
Burden of Proof	Owner must prove that there is a loss of goodwill.	State must determine losses with no burden of proof on owner.
Relationship to Taking	There must be a taking of real property in order that a loss of goodwill is claimed.	No taking of real property is required in order that loss may occur.
Use of Master's Process	NA	No longer a required step to be used minimize the number of full court proceedings.
Capping of Benefits by Fair Market Value (FMV)	In practice, benefits are carefully calculated and at most the FMV of the business less value of saleable assets is compensable.	Uncertainties in language provide no guarantee of a ceiling, thus payments could likely exceed a FMV determination.

CALIFORNIA

ARTICLE 6

Compensation for Loss of Goodwill

- § 1263.510. Burden of proof
- § 1263.520. State tax returns
- § 1263.530. Scope of article

Collateral References:

Witkin Summary (8th ed) Constitutional Law § 735A.
Am Jur 2d Eminent Domain §§ 285 et seq.

Law Review Articles:

Basis of denial of compensation for loss of good will. 6 Cal Western LR 57.

Annotations:

Good will or "going concern" value as element of lessee's compensation for taking leasehold in eminent domain. 58 ALR3d 566.
Good will as element of damages for condemnation of property on which private business is conducted. 81 ALR3d 198.

§ 1263.510. [Burden of proof]

(a) The owner of a business conducted on the property taken, or on the remainder if such property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves all of the following:

- (1) The loss is caused by the taking of the property or the injury to the remainder.
- (2) The loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill.
- (3) Compensation for the loss will not be included in payments under Section 7262 of the Government Code.
- (4) Compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

(b) Within the meaning of this article, "goodwill" consists of the benefits that accrue to a business as a result of its location, reputation

for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

Added Stats 1975 ch 1275 § 2, operative July 1, 1976.

Law Revision Commission Comment:

Section 1263.510, which is the same in substance as Section 1016 of the Uniform Eminent Domain Code, is new to California eminent domain law. Under prior court decisions, compensation for business losses in eminent domain was not allowed. See, e.g., *City of Oakland v Pacific Coast Lumber & Mill Co.*, 171 Cal 392, 153 P 705 (1915); but see *Community Redevelopment Agency v Abrams*, (hearing granted by Supreme Court 1974). Section 1263.510 provides compensation for loss of goodwill in both a whole or a partial taking. Goodwill loss is recoverable under Section 1263.510 only to the extent it cannot reasonably be prevented by relocation or other efforts by the owner to mitigate.

The determination of loss of goodwill is governed by the rules of evidence generally applicable to such a determination and not by the special rules relating to valuation in eminent domain contained in Article 2 (commencing with Section 810) of Chapter 1 of Division 7 of the Evidence Code. See Evid. Code § 811 and Comment thereto. Thus, the provisions of Evidence Code Sections 817 and 819 that restrict admissibility of income from a business for the determination of value, damage, and benefit in no way limit admissibility of income from a business for the determination of loss of goodwill. Notwithstanding Section 1260.210, the burden of proof is on the property owner under this section.

Section 1263.510 compensates for goodwill loss only to the extent such loss is not compensated by Government Code Section 7262 (moving expense and moving losses for relocated business or farm operations; in-lieu payments for business or farm operation that cannot be relocated without a substantial loss of patronage). See also Sections 1263.010 (no double recovery), 1263.410 (offset against benefits to remainder).

Collateral References:

29 Cal Jur 3d Eminent Domain § 81.

Law Review Articles:

Maleck, Loss of business good will in eminent domain proceedings. (1978) 53 St BJ 32.

Annotations:

Good will as element of damages for condemnation of property on which private business is conducted. 81 ALR3d 198.

NOTES OF DECISIONS

The right to damages and the value of the property taken in an inverse condemnation action are normally determined as of the time of the damage or taking. Thus, in an action by a taxicab company against a city for damages for inverse condemnation due to the loss of business allegedly caused by the city's commencement of a competitive transportation service, plaintiffs could not avail themselves of Code Civ. Proc., §§ 1263.510 and 1230.065, declaring that as of 1976, good will of a business is compensable to a certain extent, where the loss of plaintiffs' business had occurred more than one year prior to 1976. *Hladek v Merced* (1977) 69 CA3d 585, 138 Cal Rptr 194.

In an eminent domain proceeding, the trial court's

denial of defendant's claim for compensation for loss of business good will, on the ground the complaint in the proceeding was filed one day before the statute permitting compensations for loss of business good will became effective, did not deny defendant equal protection of the laws, where the statute in question did not touch on a fundamental right, but fell within the area of economic regulation and was therefore subject to the rational relationship test. It is a necessary function of the Legislature to expand and change the law to meet modern conditions, and it was within the power of the Legislature, in the field of economic regulation, to specify a date certain when a new enactment will take effect. The rational relationship between

the statute and the governmental objective concerned orderly transition and was constitutionally justified for that reason. Carson, Redevelopment Agency v Wolf (1979) 99 CA3d 239, 160 Cal Rptr 213.

§ 1263.520. [State tax returns]

The owner of a business who claims compensation under this article shall make available to the court, and the court shall, upon such terms and conditions as will preserve their confidentiality, make available to the plaintiff, the state tax returns of the business for audit for confidential use solely for the purpose of determining the amount of compensation under this article. Nothing in this section affects any right a party may otherwise have to discovery or to require the production of documents, papers, books, and accounts.

Added Stats 1975 ch 1275 § 2, operative July 1, 1976.

Legislative Committee Comment:

Section 1263.520 is comparable to a portion of Government Code Section 7262(c). The state tax returns remain confidential under this section and may not be introduced in evidence in the case. See, e.g., Rev & Tax Code §§ 19282 (personal income tax), 22451 (bank and corporation tax).

Collateral References:

29 Cal Jur 3d Eminent Domain § 81.

§ 1263.530. [Scope of article]

Nothing in this article is intended to deal with compensation for inverse condemnation claims for temporary interference with or interruption of business.

Added Stats 1975 ch 1275 § 2, operative July 1, 1976.

Legislative Committee Comment:

Section 1263.530 makes clear that this article is not intended to affect the rules relating to compensation for temporary business losses. This matter is left to continuing case development.

Collateral References:

29 Cal Jur 3d Eminent Domain § 81.

Law Review Articles:

Compensation for injury to business. 4 CLR 248.
Unsoundness of California's noncompensability rule as applied to business losses in condemnation cases. 20 Hast LJ 675.

Annotations:

Good will as element of damages for condemnation of property on which private business is conducted. 81 ALR3d 198.

possibly have been found for its adhesives manufacturing plant, where there was no data available from which to determine the actual demand or fair market value of the property because of the special use made by defendant of it, and where expert witnesses presented evidence based on the market value of the property for the sole purpose for which it could reasonably be used. When special use property is involved, the opinions of experts and the data on which such opinions are based are entitled to greater deference for lack of any other objective standards such as the price which might be obtained were a buyer readily ascertainable. *Commerce City v National Starch & Chemical Corp.* (1981) 118 CA3d 1, 173 Cal Rptr 176.

In determining severance damage in an eminent domain proceeding, such factors as the size and shape of the remainder, and impairment of use of the property by showing the uses to which the property was adaptable prior to the taking and the limited uses to which the property may be devoted thereafter may properly be considered. *Commerce City v National Starch & Chemical Corp.* (1981) 118 CA3d 1, 173 Cal Rptr 176.

In eminent domain proceedings by a city for the taking of a right of way and slope easements for street purposes which bisected industrial property owned by defendant and operated as a plant for manufacturing adhesives, there was ample evidence to support the findings of the trial court that the remaining life of the machinery and fixtures on the property was reduced to six years and to support its use of the calculations of severance damages based on that determination in making its award, where evidence was presented that because of the taking and the resulting loss of expansion space, the plant would have to be discontinued or relocated within three to five years, where there was expert opinion that the property was a special purpose property which could not sell for the highest price to anyone who

wished to make any other use of it than an adhesives manufacturing plant, where the real property appraiser for defendant testified he took into consideration the economic feasibility of continued use of the facilities only to the extent it affected the present market value of the real property, including the machinery, equipment and fixtures, and where the city introduced no expert evidence either as to the value of the machinery and equipment in before or after taking condition or as to the character and special needs of the adhesive industry. Defendant's evidence of substantial impairment of use which diminished the market value of the property was admissible; although loss of profits is not compensable in eminent domain, compensation for diminution in value of the remainder for its prior higher and best use is constitutionally compelled. *Commerce City v National Starch & Chemical Corp.* (1981) 118 CA3d 1, 173 Cal Rptr 176.

Under the statute governing condemnation damages (Code Civ. Proc., § 1263.420), which provides a condemnee may recover any "damage . . . caused to the remainder by . . . (a) [t]he severance [or by] . . . (b) [t]he construction and use of the project for which the property is taken," it is damages caused by the taking that are the subject of a condemnation action; accordingly, expenses of mitigating damages may be awarded only if they have been incurred in mitigation of damages caused by a taking, not if they have been incurred to prevent or partially prevent a taking. Thus, legal and engineering expenses incurred by landowners attempting to compel a county water agency to comply with the plans and environmental impact report for a water pipeline project that traversed their land, which were expenses incurred to alter the taking of their land for the project rather than to mitigate damages caused by the taking, could not be recovered as condemnation damages. *Placer County Water Agency v Hofman* (1985, 3d Dist) 165 Cal App 3d 890, 211 Cal Rptr 894.

§ 1263.430. [Benefit to remainder]

Witkin Summary (9th ed) Constitutional Law § 1029.

§ 1263.440. [Time of damage or benefit]

Witkin Summary (9th ed) Constitutional Law § 1022.

§ 1263.450. [Basis of compensation]

Witkin Summary (9th ed) Constitutional Law § 1022.

§ 1263.510. [Burden of proof]

Witkin Procedure (3d ed) Plead § 1037.

Witkin Summary (9th ed) Constitutional Law § 1031.

Cal Jur 3d (Rev) Eminent Domain §§ 81, 167, 320.

Miller & Starr, Cal Real Estate 2d §§ 18:83, 23:1.

Code Civ. Proc., § 1263.510, which authorizes compensation for the loss of business goodwill caused by a forced relocation due to condemnation, was enacted with the purpose of providing monetary compensation for the kind of losses which typically occur when an ongoing small business is forced to move and give up the benefits of its former location. Thus, where a condemnation proceeding forced a veterinarian to move his practice from an older building with cheap rent which enabled the practice to show a profit to a new building with a rent of about \$29,000 per year higher, but at which the practice maintained its patronage, the veterinarian was entitled under Code Civ. Proc., § 1263.510, to compensation for the loss of the benefit of lower rent. The statute does not limit goodwill to patronage. *People ex rel. Dept. of Transportation v Muller* (1984) 36 Cal 3d 263, 203 Cal Rptr 772, 681 P2d 1340.

The defendants in an eminent domain proceeding were not entitled to recover compensation for loss of business goodwill under Code Civ. Proc., § 1263.510 (part of the new eminent domain law (Code Civ. Proc., § 1230.010 et seq.) which became operative on July 1, 1976), where the proceedings were initiated in 1973. Prior to enactment of the new law, compensation for loss of goodwill was not available in eminent domain proceedings, and, although a prior judgment had been reversed on appeal and the case had been retried after the operative date of the new law, Code Civ. Proc., § 1230.065, subds. (b) and (d), explicitly provide that the new law does not apply to an eminent domain proceeding commenced prior to January 1, 1976, and that, if an appeal is pending on the operative date, the law applicable prior to the operative date governs the determination of the appeal. *County of San Diego v Morrison* (1984, 4th Dist) 153 Cal App 3d 233, 200 Cal Rptr 187.

A county's payment for business goodwill in a condemnation proceeding it elected to pursue did not constitute the payment of a state-mandated cost under Rev. & Tax. Code, § 2231, subd. (a), and Rev. & Tax. Code, § 2207. Although Stats. 1975, ch. 1275, which revised and recodified the state's eminent domain laws, included the requirement that upon proof of satisfaction of certain stated conditions the owner of a business conducted on the condemned property is entitled to compensation for a loss of goodwill (Code Civ. Proc., § 1263.510), the Legislature made clear the

discretionary nature of acquisition of property by eminent domain by the passage of Code Civ. Proc., § 1230.030 (also included within Stats. 1975, ch. 1275). Thus, the Legislature intended for payment of goodwill to be discretionary, and such an increased cost so incurred as a result of the enactment of the revised eminent domain laws was not a cost which the county was required or mandated to incur. *City of Merced v State of California* (1984, 5th Dist) 153 Cal App 3d 777, 200 Cal Rptr 642.

In an eminent domain proceeding, the trial court properly refused an instruction requested by the condemning redevelopment agency that the property owner had the burden of proof to establish the value of goodwill lost as a result of the condemnation. Code Civ. Proc., § 1260.210, subd. (b), states that neither plaintiff nor defendant has the burden of proof on the issue of compensation, unless otherwise provided by statute, and Code Civ. Proc., § 1263.510, did not support the instruction requested by the redevelopment agency. That statute is limited to delineating the circumstances under which a defendant is entitled to any compensation for goodwill and is devoid of any reference to the amount thereof. There is nothing in the statutory scheme of the Eminent Domain Law (Code Civ. Proc., § 1230.010 et seq.) suggesting there is any logical reason to treat the burden of proof as to the amount of compensation for loss of goodwill any differently than for a taking of an interest in realty itself. Further, § 1263.510 is to be construed liberally to extend the remedial benefits of its provisions as fully as possible. *Redevelopment Agency v Metropolitan Theatres Corp.* (1989, 4th Dist) 215 Cal App 3d 808, 263 Cal Rptr 637.

A fair market value approach is an acceptable approach in determining the capitalization rate to apply to excess income in valuing lost goodwill of a business, in that neither Code Civ. Proc., § 1263.010 (compensation of property taken by eminent domain), nor valuations of goodwill in other contexts indicate an exclusive method for calculating lost goodwill. The plain language of Code Civ. Proc., §§ 1263.010 and 1263.510 (loss of goodwill) indicates the Legislature at least sanctioned a fair market value analysis in determining the value of loss of goodwill. *Community Development Com. v Asaro* (1989, 4th Dist) 212 Cal App 3d 1297, 261 Cal Rptr 231.

ARTICLE 1

General Provisions

Cal Jur 3d (Rev) Eminent Domain § 65.

7 Fed Proc, L Ed, Condemnation of Property §§ 14:139 et seq.

Bargaining in the shadow of eminent domain: Valuing and apportioning condemnation awards between landlord and tenant. (1987) 34 UCLA LR 1083.

ARTICLE 2

Leases

Eminent domain: measure and elements of lessee's compensation for condemnor's taking or damaging of leasehold. 17 ALR4th 337.



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: SB 104

APPROVED: *Frank G. Turpin*
Frank G. Turpin, Commissioner

TITLE: An Act relating to the taking and compensation for damage of property by state agencies, municipalities, and other entities; and providing for an effective date.

DATE: March 19, 1991

Statement of Position

While sensitive to the underlying circumstances which this bill appears to address, the department cannot endorse it in the current form. Further, we feel it important to point out the very serious consequences these changes would have on the ability of the state to proceed with capital construction. Simply stated, projects will become significantly more costly, with such costs being fully ineligible for federal-aid reimbursement, and the likelihood of long delays on some projects appears certain.

There are, however, certain features of the bill which we support, such as making uniform the treatment of citizens relocated as a consequence of an eminent domain action. Here-to-fore relocation benefits of AS 34.60 were exclusively available to projects with federal funding. Projects with other funding sources were not eligible for these relocation benefits, thus causing non-uniform treatment of citizens affected by capital projects.

The impacts of this bill are very far reaching, and could add millions of dollars to the general fund cost of transportation programs on a yearly basis. A detailed discussion of our analysis of the bill and its ramifications is attached. I hope you will take the time to review this material for it clarifies how adverse an impact this bill is likely to have on this vital area of public service.

Finally, we believe a far more targeted and less costly solution is possible to resolve the type of problem addressed by this bill. Our recommendation is contained in the last section of Attachment A.

**Attachment A
Concerning:**

SB 104

An Act relating to the taking and compensation for damage of property by state agencies, municipalities, and other entities; and providing for an effective date.

By

Department of Transportation and Public Facilities

Introduction

It is believed that this bill is meant to rectify what is perceived as an inequity when a business is relocated as a consequence of an eminent domain action and suffers some form of uncompensated loss which is ineligible for compensation under existing constitutional and statutory law. In addressing this circumstance, the bill as written, would accomplish significant change in eminent domain practices particularly as it relates to businesses, but also to all eminent domain and relocation actions. These changes are so profound, that Alaska would become a "pioneer" state in the area of eminent domain law and would easily have the most generous program in the nation. We believe that there is a real opportunity that this generosity will result in payments well in excess of fair market value.

This paper attempts to explain what protections exist under current law, the changes proposed in this new law as well as the fiscal consequences of these changes, and recommendations to address the problem of business relocations which would be less disruptive to the program as a whole.

Current Practice

The practice of eminent domain is perhaps one of the most powerful government powers. It needs to be carefully controlled by sound policy and procedure, with appropriate checks and balances. We believe that any policy adjustment should be carefully considered in relation to the dual goals of protection of both private and public rights.

Current practice contains an inequity between projects with federal funding and those without. Unless federal funding is involved, no relocation benefits are authorized under state law. This bill corrects this inequity by making relocation benefits available for all projects.

When federal funds are involved, current policy regarding condemnation and relocation work well in most instances. We believe that policy adjustments should build upon the strengths of current law. Following is a discussion of the rights and protections afforded citizens affected by eminent domain actions under present law.

1. Just compensation generally: The supreme court has stated that the constitutional provision and the law is to be construed in favor of the owner. That is, under current law the owner is given the benefit of every doubt.

A. Measure of compensation for real property: Full market value upon the date of taking. The owner is entitled to the market value of the property taken plus the market value of the property not taken but injured by the taking as measured by the decrease in the market value of the remainder before and after the taking. Under current department practice these values are determined by appraisers and certified by review appraisers.

B. Measure of compensation for special damages: The owner is entitled to:

1. payment of expenses incurred in finding and moving to a new place of business, including lodging, transportation and brokerage fees;
2. payment for personal property lost or damaged during relocation;
3. payment for personal property which cannot be used in the new business location; and,
4. in the event a business cannot be relocated, a payment can be made in lieu of relocation up to \$20,000. In essence this is a payment for going out-of-business.

C. Relocation benefits: The business owner is entitled to relocation costs and benefits including the cost of moving, including packing and unpacking, storage and move insurance, licenses and permits, new signs and stationary, certain repairs or improvements to new location, utility connections, feasibility studies, advertising, new special assessment costs, advertising of new business location, and other items considered essential to reestablish the business

Summary: Under current law the owner is compensated for the value of the real property lost; cost of finding a new place of business; all damage to personal property; and all moving costs. Conceptually the owner should be whole; i.e.: he should be able to buy or lease a comparable piece of property and move his/her business to it.

However, there are gaps in the above benefits that arise in some circumstances. Perhaps the biggest gap is left when no suitable location can be found or a location less suitable to the business is the only alternative. In these circumstances, the business owner may suffer damages. Here lies what we believe is the crux of the problem and our recommendations address businesses facing relocation which suffer consequences not now eligible for compensation.

2. Deposit. The state must deposit its estimate of compensation when it files a declaration of taking. The owner is in a position whereby he/she can obtain full payment of the state's estimate of compensation on the date of filing or as soon thereafter as it is clear they will not contest the authority and necessity of the state's acquisition.

3. Authority. If the owner contests the state's authority to acquire the property in question, the state must prepare a statement of authority and necessity. This document requires that the state justify in writing the purpose and need for the property in question (see AS 09.55.270). Alaska is one of a limited number of states which bestows this additional layer of protection to private parties affected by eminent domain.

4. Costs and fees. A property owner may be concerned about the cost of contesting a condemnation. Yet, the law currently goes a long ways towards protecting the owner in condemnation proceedings.

A. Master's Hearing. Under Civil Rule 72, any party to a condemnation is entitled to a masters hearing or jury trial on the question of just compensation. The master's hearing is informal in nature and gives everyone the right to an inexpensive shot at putting their compensation arguments to a neutral third party appointed by the courts. The vast majority of acquisitions which are uncontested as to authority but are disputed as to compensation are currently resolved by a masters hearing.

Any party can appeal the master's decision to the courts but if the state is the appealing party, it must pay 100% of the owners costs and fees incurred through trial regardless of how the trial turns out.

B. Owner's costs and fees and the 10% Rule. Rule 72 provides that if an owner is successful in increasing just compensation by 10% above the state's offer, they get 100% of their reasonable costs and attorneys fees. Even if they do not succeed in increasing just compensation by 10% they still get all costs and fees that the court finds were reasonably and necessarily incurred to assure the payment of adequate just compensation.

C. State's costs and fees. There is no provision for payment to the state of its costs and fees incurred on condemnation claims. Even if the state wins, i.e., the estimate of value is upheld, the court can find that the owner's costs and fees were necessarily incurred, and the state still cannot collect any of its costs and fees.

D. Expedited proceedings. Rule 72 (j) provides that the court and the parties are to expedite the proceedings for the determination of just compensation.

E. Abandoned proceedings. If the state abandons the proceedings or is not granted possession because they failed to prove authority and necessity of the taking AS 34.60.080(a) requires that the owner be paid all reasonable costs, disbursements, and expenses of the proceedings.

Analysis of Bill's Changes and Consequences

This bill would have both short and long term impacts. The immediate effective date will change the rules under which many projects which are currently undergoing active

acquisition efforts. Most of these projects must be "obligated" (which requires that ROW acquisition is 100% complete) or we cannot use the federal funds allocated to the project. The presence of even one business seeking compensation under the provisions of this bill on a active project will threaten our ability obligate the project because we can't certify the right-of-way acquisition as being complete. This will potentially result in the loss of millions of dollars of federal-aid highway funds in the current federal fiscal year.

A long term effect of the bill is the tremendous legal uncertainty it will cause. The bill will dramatically alter the practice of property acquisition involving businesses. Administrative and judicial decisions will no longer have the firm foundation of case law as developed in numerous cases in Alaska and the nation over many decades. The potential for delay and tedious legal interpretation will remain high for a long time. This will delay many future projects and add significant cost.

Furthermore, additional business compensation added by this bill, including staff time, appraisal costs, legal costs and the actual compensation to business owners will be eligible for federal funds. Business losses are not eligible for federal reimbursement, (23 CFR 710.304 (h) states: "*Payments made for ... loss of business ... are not eligible for federal participation.*") Thus, any payment for such losses will be out of an additional state general fund contribution.

A fourth consequence of the bill, and perhaps an unintended consequence, is the possibility that many actions of government falling under the legitimate exercise of its powers, which cause damage to a business may now be compensable. Many necessary actions of government can be interpreted as a damage, though they are not eligible for compensation under current eminent domain theory. Consider:

- Actions to increase or decrease traffic flow on a given route.
- Actions to limit or prohibit certain turning movements.
- Actions to temporarily close roads to traffic for maintenance or construction.
- Actions regulating the size and weight of vehicles used by businesses.
- Actions to condition or deny certain driveway applications.

We believe these types of actions could be construed as a "taking" or damage which is eligible for reimbursement. Even if we prevail in court, the vagueness of the bill's language would seem to invite suits of this nature.

Comparison to Other States

No other state that we know of compensates for short and long term business losses. Both Florida and California provide some compensation for loss of goodwill. In California, a bellwether state in many other legal issues, their act compensates for loss of goodwill, but under a rather tightly defined standard which the business owner is obliged to prove. The Florida law is more limited than the California law.

In conversations with CalTrans personnel who administer the right-of-way program in California, they have experienced the time consuming and costly legal proceedings that we predict for this bill.

In one court decision (California Department of Transportation v. Muller), involving a viable though not very prosperous veterinary clinic, the court awarded the clinic operator a new clinic that was substantially better in quality, size and condition than the acquired location. The fact that the business was a corporation owned by the same individual who owned the land and buildings did not prevent what in essence were duplicate payments (i.e., the fair market value of the property and the non-relocatable business assets). This contravenes a basic concept of eminent domain which is to make the property owner "whole" but not to enrich them at the public's expense.

CalTrans finds that many goodwill claims are found invalid based upon the failure to provide records or that goodwill is not substantiated. Where goodwill must be compensated, claims range from \$30,000 to in excess of \$1,000,000.

Given the more limited application of the California law and burden of proof placed on the business owner, we predict that under the effects of this bill Alaska's experience will be more costly for there are no bounds to what the state must pay, nor is there a burden of proof on the business owner.

A comparison of the California law and SB 104 is shown in Table 1.

Additional Issues

Aside from the major points made above there are other concerns that we wish to bring forward:

Compensation Question

The bill create a scheme where the emphasis is on requiring the state to deposit as much money as possible up front, scrutinizing that deposit and requiring prompt distribution of the deposit.

There should be no requirement of distribution until objections to the state's right to take are resolved and competing claims to the deposit are resolved. The court must be left with the discretion to distribute the deposit when and how it's judgement warrants. Court time should not be wasted holding proceedings on the deposit as opposed to determining the fair amount of compensation. Considering that the state jeopardizes it's case if the deposit is less than 90% of the final compensation this additional scrutiny is unwarranted. Further there may be more than one party who is entitled to a portion of the deposit.

Loss of Declaration of Taking Procedure

Alaska law currently provides a procedure whereby we can accelerate the transfer of title while the process of establishing equitable compensation is adjudicated. This procedure is intended to ensure that vital public projects are not delayed, while retaining protections for the land owner affected. The bill appears to frustrate our ability to utilize this procedure by allowing objections to matters that are inherently subjective.

Table One
Comparison of Alaska and California Concerning Business Losses

California is one of very few states known to have a statutory requirement for compensation of certain types of business loss not otherwise compensable under eminent domain proceedings. Because the California law is exceptional in character, it is felt a good benchmark by which the proposed legislation may be compared. The following is a side-by-side comparison of a number of characteristics of the California law with the proposed bill.

CONSIDERATION	CALIFORNIA <i>(Title 7, Ch. 9, Art. 6, Sec. 1263, 510-530)</i>	ALASKA <i>(SB 104)</i>
What is Compensable:	Loss of business good will, such as a decline or temporary drop-off in patronage. Temporary interference loss or loss by interruption is specifically excluded.	Loss of short and long term business losses, loss of goodwill, and private injury.
Definition:	Goodwill is defined in some detail by legislation.	Above terms are not defined.
How claimed:	Business owner is notified of opportunity to make claim, CalTrans then prepares goodwill appraisal. Only a small fraction of businesses file goodwill loss claim.	State <u>must</u> prepare appraisal before negotiations. State will incur costs on all businesses, regardless of presence of actual loss.
Required Information:	State granted access to prior 3 years tax records plus uses voluntary questionnaire.	State has no legal access to any business information or records except that which is volunteered.
Funding:	Use state general fund; FHWA will not participate.	Use state general fund; FHWA will not participate.
Declaration of Taking Procedure:	Not changed.	Additional time factors and burdens placed on process, render it ineffective.
Definition of "Real Property:"	Not changed.	Changed considerably by exchanging term "real property" with "property."
Changes in Uniform Relocation Requirements:	Not changed.	Intertwined with eminent domain process and process appears cumbersome in consequence.
Burden to Minimize Loss:	Business owner is required to take steps that a reasonably prudent person would take and adopt to preserve goodwill.	No duty or burden is placed on business owner to minimize loss.
Duplicate Compensation:	Duplication of compensation is prohibited.	Duplication of payments is not prohibited and perhaps probable, given overlap of various types of losses to be recompensed.
Burden of Proof:	Owner must prove that there is a loss of goodwill.	State must determine losses with no burden of proof on owner.
Relationship to Taking:	There must be a taking of real property in order that a loss of goodwill is claimed.	No taking of real property is required in order that loss may occur.
Use of Master's Process:	N/A	No longer a required step to be used to minimize the number of full court proceedings.
Capping of Benefits by Fair Market Value (FMV)	In practice, benefits are carefully calculated and at most the FMV of the business less value of saleable assets is compensable.	Uncertainties in language provide no guarantee of a ceiling, thus payments could likely exceed a FMV determination.

These frustrations include:

Compensation. The bill imposes a third level of compensation determination on the judge before the state is granted possession. The court must determine that the state has deposited adequate just compensation for all real and personal property interests taken. This is a departure from current law in two respects:

First, there is a hearing regarding the adequacy of the compensation deposit. This will entail extensive testimony from experts, a process which causes significant delay in obtaining possession since most experts will not testify or be in a position to render a meaningful opinion until they have finished their reports. Also consider the crowded court docket and the result is that a declaration of taking will be meaningless.

Second is the requirement of valuation for personal property which gets into incidental or special damages such as business loss and damage to personal property. Currently the claimant bears the burden of proof on these items. This is reasonable because the claimant is in the best position to control and limit the loss. The bill removes the owners incentive to limit the loss. In most cases incidental or special damages are not incurred until the claimant actually moves. Under the bill the claimant must be adequately compensated before the claimant has to move.

Replat. The court may not grant possession until the state has replatted the owner's remainder. This is a very problematic requirement for we must own property before we file for a subdivision. Right now this element of the law is not followed in "letter" but adhered to in "spirit". The change places a burden on us which we can not technically satisfy--replatting land prior to possession.

Compensation Benefits to Those Who Have Not Had Real Property Taken

A whole new class of claimants is created by the proposed legislation. Currently benefits are triggered by the taking of some real property interest. If we take something that person could claim applicable relocation benefits. This threshold is removed, and a person can claim benefits regardless of whether a real property interest is taken.

Time Pressures

There is always considerable pressure by the public to keep projects moving. These projects solve urgent transportation and safety needs, create jobs in construction, and ensure that we utilize every available federal dollar. The bill gives a business owner tremendous leverage to stop projects. Thus we will be coerced to settle for amounts that may far exceed compensation based on merits. If we instead choose to go slow so that time is not our disadvantage, project timetables will slip by one year at minimum. Such a strategy cannot be implemented without significant short term disruptions to projects now underway, with corresponding impacts to the construction and transportation industries.

Merger of Acquisition and Relocation

This bill has the affect of merging two distinct aspects of land acquisition under eminent domain. Case law of the U.S. Supreme Court has held firm to the principal that compensation for the consequent damages of the taking are not compensable as part of the fee granted for the taking. In other words we purchase the property and not the opportunities which the owner may lose. However, in recognition of these consequential damages Congress passed the Uniform Relocation Act (1971) which does compensate for some aspects of these consequential costs. The two types of compensation are separated both in time and procedure.

Initially we value the land and either voluntarily or involuntary possession is gained and a final price is established. Secondly, and administratively the department proceeds with payments for relocation. This bill has the effect of intertwining these two elements and making them complex in application.

Definition of Property

The bill redefines property to include personal property. The change in definition adds unnecessary confusion without corresponding benefits to the public. As a general rule we acquire real property and relocate or compensate for personal property when it cannot be reused or relocated.

Duplicate and Unjustified Compensation

A very real likelihood of the amendments is that business owners will receive duplicate compensation or compensation for losses that market analysis will not support. In addition to generous payments prompted by the use of delay this prediction is based on a number of points:

Overlapping and Undefined Terms: The terms short term business loss, long term business loss and loss of goodwill are undefined and contain some overlapping elements in general practice. They often come to mean "blue sky" or that which is over and above what a fair market value of a business is.

Burden of Proof: The state bears the full burden of estimating these losses at a very early stage in the proceedings and without access to business records. The owner has no burden of proof, nor a duty to take steps to minimize losses. This is a dramatic departure from current eminent domain practice in this and other states.

Compensation Cap: There is no upper limit to what must be compensated. Traditionally, eminent domain is limited to fair market value plus special damages. This upper limit would not apply with these amendments and compensation far in excess of fair market value seems inevitable.

Unprofitable Businesses: Many businesses are unprofitable upon market analysis yet provide a wage to the owner. They would have little or nominal value in a business transaction, but do provide independence and the future potential for profit to the owner. The state has heard arguments that we owe such owner's their

income and perhaps future profit for life and this may now be possible upon the right interpretation by the courts.

Summary

A major point on these special damages is that the loss is unknown until the business has either relocated or shut down. The owner has the ability to minimize the damages. The bill requires that the state estimate and pay for business loss before it is known whether a loss has occurred and without access to relevant records. The bill renders ineffective the declaration of taking provisions and gives owners significant leverage to coerce unwarranted compensation. The bill creates a huge disincentive for the owner to minimize his damages. Finally, the bill sets out no parameters or definitions of what the terms mean nor does it ensure that duplicate nor unwarranted compensation is disallowed.

Alternates to the Bill

This bill appears to be generated by a few recent business property acquisitions with very complex and unusual circumstances. Despite this, two cases have been resolved and the third appears headed toward settlement. Such a broad change in state policy should not be driven by what are essentially exceptions to a functioning policy. In most circumstances the current law works reasonably well and results in takings, either negotiated or thru condemnation, that fairly compensate the land and business owners. The exception is when a business cannot be relocated or is relocated to a less desirable location. In these infrequent circumstances current law provides only nominal compensation for a business which must close or incur higher costs because acceptable relocation is not possible. The current limit for such compensation is \$20,000.

We would recommend that in such circumstances the upper limit of compensation be increased which would only require a change to AS 34.60 (Relocation). A change of this nature would resolve the inequity created when relocation is not possible but would avoid the tremendous costs, delays and confusion we predict. Further, perhaps this type of loss should be eligible for after-the-fact analysis, when such factors as the owner's good faith efforts and actual business experience can be fairly determined. While some of these costs would also be ineligible for federal reimbursement, the likely overall cost in state funds would be much less.

If, however, some form of amendment to the eminent domain statute is required we would ask that the California statute be used, and that particular attention be paid to the issue of definitions and intent.

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 6, 1991

The Honorable Patrick Rodey
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Re: SB 104

Dear Senator Rodey:

I recently spoke with your aide, Tim Benintendi, regarding SB 104 and he requested my comments in writing. The Department of Commerce & Economic Development, Division of Investments has questioned whether Senate Bill 104 is intended to apply to a foreclosure of real property conducted pursuant to a deed of trust. While portions of the bill seem clearly to apply to eminent domain (see for example sections 1 - 7), some sections could arguably apply to a foreclosure conducted by a state agency pursuant to a deed of trust or judgment. (See for example, section 9, "persons displaced as a result of [FEDERALLY ASSISTED] activities undertaken by state agencies")

A possible solution to clarify that the program in AS 34.60 does not apply to foreclosure would be to add a provision to the definitions contained in section 21 as follows. "(8) "taking" does not include a foreclosure conducted pursuant to AS 09.35 or AS 34.20." While this change will address the concern of the Division of Investments, we do not speak for other state agencies and understand that the Department of Transportation and Public Facilities is undertaking its own careful review of the bill.

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-199
PHONE: (907) 276-3550
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P.O. BOX K— STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

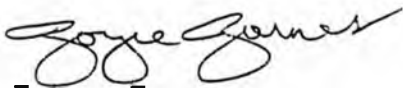
The Honorable Patrick Rodey
Alaska State Legislature

March 6, 1991
Page 2

Thank you for your attention to this concern. Please let me know if I may be of further service.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
Joyce James
Assistant Attorney General

JJ:prm

cc: Martin Richard, Director
Division of Investments
Department of Commerce & Economic Dev.

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Proposed
CS FOR SENATE BILL NO. 113 (STATE AFFAIRS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Public Officers Compensation Commission; relating to the
2 compensation of the governor, lieutenant governor, members of the legislature, heads of the
3 principal departments of the executive branch of government, supreme court justices, judges
4 of the court of appeals, judges of the superior court, and district court judges; and
5 providing for an effective date."

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

7 * Section 1. AS 22.05.140(a) is repealed and reenacted to read:

8 (a) The compensation of a supreme court justice shall be established by order of the
9 Public Officers Compensation Commission.

10 * Sec. 2. AS 22.07.090(a) is repealed and reenacted to read:

11 (a) The compensation of a judge of the court of appeals shall be established by order of
12 the Public Officers Compensation Commission. The compensation of a judge may not be
13 diminished during the term of office, unless by general law applying to all salaried officers of

1 the state.

2 * Sec. 3. AS 22.10.190(a) is repealed and reenacted to read:

3 (a) The compensation of a superior court judge shall be established by order of the Public
4 Officers Compensation Commission.

5 * Sec. 4. AS 22.15.220(a) is repealed and reenacted to read:

6 (a) The compensation of a district court judge shall be established by order of the Public
7 Officers Compensation Commission.

8 * Sec. 5. AS 22.15.230 is amended to read:

9 Sec. 22.15.230. ADDITIONAL COMPENSATION. Subject to rule of the supreme court,
10 a [DISTRICT JUDGE OR] magistrate shall receive a per diem allowance and a transportation
11 allowance commensurate with that authorized for other state employees.

12 * Sec. 6. AS 24.10.100 is repealed and reenacted to read:

13 Sec. 24.10.100 COMPENSATION OF LEGISLATORS. The salary for each member
14 of the legislature shall be established by order of the Public Officers Compensation Commission.
15 The commission may authorize per diem for legislators. The commission may also authorize
16 additional compensation for the president of the senate and the speaker of the house of
17 representatives.

18 * Sec. 7. AS 24.10.110 is repealed and reenacted to read:

19 Sec. 24.10.110. ADDITIONAL ALLOWANCES. The Public Officers Compensation
20 Commission may authorize an annual allowance for postage, stationary, stenographic services,
21 and other expenses for each member of the legislature.

22 * Sec. 8. AS 24.10.120 is amended to read:

23 Sec. 24.10.120. METHOD OF PAYMENT. Salaries, and, if authorized by the Public
24 Officers Compensation Commission, per diem [,] and additional allowances for members of the
25 legislature shall be paid by warrants drawn on vouchers approved by the legislative fiscal officer.
26 The legislative fiscal officer shall, by January 31 of each year, file with the legislature's fiscal
27 office a report of all vouchers approved for payment under this section during the preceding
28 calendar year. The report must include [SHALL PROVIDE], by legislator, the date of each
29 voucher, the amount paid, and the basis for approval for payment. The report is a public record.

30 * Sec. 9. AS 39.20.010 is repealed and reenacted to read:

31 Sec. 39.20.010. COMPENSATION OF GOVERNOR. The compensation of the governor

1 shall be established by order of the Public Officers Compensation Commission.

2 * Sec. 10. AS 39.20.030 is repealed and reenacted to read:

3 Sec. 39.20.030. COMPENSATION OF LIEUTENANT GOVERNOR. The compensation
4 of the lieutenant governor shall be established by order of the Public Officers Compensation
5 Commission.

6 * Sec. 11. AS 39.20.050 is amended to read:

7 Sec. 39.20.050. EXCLUSIVE COMPENSATION. The compensation established by
8 order of the Public Officers Compensation Commission and other benefits established
9 [FIXED] by law for the governor and lieutenant governor are compensation [IS] in full for all
10 services rendered by each of them in any official capacity or employment whatsoever during their
11 respective terms of office, and shall be paid throughout their respective terms of office unless the
12 office becomes vacant.

13 * Sec. 12. AS 39.20.080(a) is repealed and reenacted to read:

14 (a) The compensation of the head of each principal executive department shall be
15 established by order of the Public Officers Compensation Commission.

16 * Sec. 13. AS 39.23 is amended by adding a new section to read:

17 Sec. 39.23.201. COMPENSATION COMMISSION ESTABLISHED. (a) The Public
18 Officers Compensation Commission is established in the Office of the Governor. The
19 commission is composed of seven members appointed by the governor. Members serve staggered
20 terms of four years. Commission membership shall include at least one business executive, one
21 person with experience in public administration, one person with experience in personnel
22 management, one economist, one lawyer, and a former elected public officer of the state. A
23 vacancy shall be filled for the balance of the unexpired term. A commission member may serve
24 no more than two complete consecutive terms.

25 (b) The commission shall elect a member to chair its meetings. A majority of the
26 commission members constitutes a quorum to transact business. The affirmative vote of four
27 members is required to approve the commission's report or an order on compensation.

28 (c) The commission shall meet every other year at the call of the chair. Notice of a
29 meeting shall be mailed to each member at least 15 days before the date scheduled for the
30 meeting.

31 (d) The commission shall hold a public hearing to discuss its findings before submitting

2

1 its report or an order to the legislature.

2 * Sec. 14. AS 39.23.230(a) is amended to read:

3 (a) If requested by the commission, the Department of Administration [LEGISLATIVE
4 AFFAIRS AGENCY] shall provide staff for the commission.

5 * Sec. 15. AS 39.23 is amended by adding a new section to read:

6 Sec. 39.23.241. DUTIES OF THE COMMISSION. (a) The commission shall review
7 the compensation of the governor, lieutenant governor, members of the legislature, heads of the
8 principal departments of the executive branch of state government, supreme court justices, judges
9 of the court of appeals, judges of the superior court, and district court judges. The commission
10 shall submit a report on its findings every odd-numbered year, during the first 10 days of the
11 regular session of the legislature. A commission member who does not concur in the report may
12 file a minority report.

13 (b) The commission may submit an order with the report making changes to the
14 compensation of a public office. Before submitting a report or order on compensation, the
15 commission shall give reasonable public notice of its preliminary findings, solicit public
16 comments, and give due regard to the public comments.

17 (c) An order changing the compensation of a public officer does not take effect if a bill
18 disapproving the order in its entirety is enacted into law before the effective date of the change
19 to compensation. Unless disapproved, an order increasing the compensation of a public officer
20 is subject to funding through legislative appropriation and takes effect on the later of July 1 of
21 the next fiscal year and the effective date of the first appropriation to fund the increase. Unless
22 disapproved and except as provided in (d) of this section, an order decreasing the compensation
23 of a public officer takes effect July 1 of the next fiscal year.

24 (d) An order decreasing the compensation of persons currently holding office as the
25 governor, lieutenant governor, justices of the supreme court, or judges of the court of appeals,
26 superior court, or district court may not take effect until the later of July 1 of the next fiscal year
27 and the effective date of a general law applying to all salaried officers of the state that diminishes
28 compensation with which the order is consistent.

29 * Sec. 16. AS 39.23.250 is amended to read:

30 Sec. 39.23.250. FILING WITH LIEUTENANT GOVERNOR AND CERTIFICATION.
31 The commission shall, upon transmitting an order on [ITS FINAL RECOMMENDATIONS FOR

#C-2 #3

1 THE] compensation [OF LEGISLATORS] to the legislature, file the order
2 [RECOMMENDATIONS] in the office of the lieutenant governor. When the order becomes
3 [RECOMMENDATIONS BECOME] effective, the commission shall certify the copy of the
4 order [RECOMMENDATIONS] on file in the office of the lieutenant governor.

5 * Sec. 17. AS 39.23.260 is amended to read:

6 Sec. 39.23.260. POLICY OF THE LEGISLATURE. It is the policy of the legislature
7 that the commission determine an equitable rate and form of compensation [, BENEFITS, AND
8 ALLOWANCES] for the governor, lieutenant governor, members of the legislature, heads
9 of the principal departments of the executive branch, supreme court justices, judges of the
10 court of appeals, judges of the superior court, and district court judges. In determining the
11 compensation for each office, the commission shall consider the following factors:

12 (1) the skill required;

13 (2) the time required;

14 (3) the opportunity for other earned income;

15 (4) the value of public services as performed in other states and in the federal
16 government;

17 (5) the value of similar services when performed in the private sector of this
18 state and in other states based on the responsibility and discretion required in the office;

19 (6) the reasonable expenses incurred in performing the public service;

20 (7) the percentage change in the Consumer Price Index for Anchorage,
21 Alaska, as determined by the United States Department of Labor, Bureau of Labor
22 Statistics since the last compensation adjustment;

23 (8) the compensation presently received by the public officers and all other
24 benefits received;

25 (9) the interests and welfare of the public and the financial ability of the state
26 to meet the costs;

27 (10) the geographic cost-of-living based on a public officer's primary place
28 of assignment;

29 (11) the cost-of-living differential between Anchorage, Alaska, and other
30 locations in the United States; and

31 (12) other factors that are normally or traditionally considered in the

1 determination of compensation [LEGISLATORS].

2 * Sec. 18. AS 39.23 is amended by adding a new section to read:

3 Sec. 39.23.401. DEFINITIONS. In this chapter,

4 (1) "commission" means the Public Officers Compensation Commission;

5 (2) "compensation" means the salary, per diem, and allowances paid a public
6 officer.

7 * Sec. 19. AS 22.05.140(c); AS 22.10.190(c); and AS 22.15.220(d) are repealed.

8 * Sec. 20. AS 39.23.200, 39.23.240, and 39.23.400 are repealed.

9 * Sec. 21. AS 24.10.101 and 24.10.105 are repealed.

#C-1
10 * Sec. 22. Notwithstanding AS 39.05.055(5) and the provisions of AS 39.23.201 enacted by sec. 13
11 of this Act, one of the initial members appointed to the Public Officers Compensation Commission shall
12 serve a one-year term, two members shall serve two-year terms, two members shall serve three-year
13 terms, and two members shall serve four-year terms.

14 * Sec. 23. When the Public Officers Compensation Commission files its first order changing the
15 compensation of justices of the supreme court or judges of the court of appeals, superior court, or district
16 court, it shall address the compensation of all of those public offices in the order. The commission shall
17 include both the governor and the lieutenant governor in the first order it issues addressing the
18 compensation of either of those public offices.

19 * Sec. 24. Sections 1 - 5 and 19 of this Act take effect on the date that the first order changing the
20 compensation of justices and judges issued by the Public Officers Compensation Commission takes
21 effect.

22 * Sec. 25. Sections 6 - 8 and 21 of this Act take effect on the date that the first order changing the
23 compensation of members of the legislature issued by the Public Officers Compensation Commission
24 takes effect.

25 * Sec. 26. Sections 9 - 11 of this Act take effect on the date that the first order changing the
26 compensation of the governor and the lieutenant governor issued by the Public Officers Compensation
27 Commission takes effect.

28 * Sec. 27. Section 12 of this Act takes effect on the date that the first order changing the
29 compensation of the heads of the principal departments of the executive branch of state government
30 issued by the Public Officers Compensation Commission takes effect.

31 * Sec. 28. Sections 13 - 18, 20, 22 and 23 of this Act take effect immediately under AS 01.10.070(c).

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#C-1

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FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 113

Revision Date: _____ Department Affected: Office of the Governor
 Title: "An Act establishing the Public Officers Compensation Commission;..." BRU: Commissions and Special Offices
 Component: Public Officers Compensation Commission
 Sponsor: Senate Rules Committee
 Requestor: Senate State Affairs COMPONENT SERIAL NO.

N	A		
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	24.8	-0-	7.4	-0-	7.4	-0-
CONTRACTUAL	36.1	7.2	33.9	7.2	33.9	7.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	60.9	7.2	41.3	7.2	41.3	7.2

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	60.9	7.2	41.3	7.2	41.3	7.2
FEDERAL FUNDS						
OTHER						
TOTAL	60.9	7.2	41.3	7.2	41.3	7.2

POSITIONS:

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

Estimate of current year impact: none

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis

Prepared By: Michael A. Nizich, Director Phone: 465-3616
 Division: Administrative Services Date: _____

Approved by Commissioner: D. Max Hodel, Chief of Staff
 Agency: Office of the Governor Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Proposed legislation replaces State Officers Compensation Commission. Fiscal note assumptions are based on the activity of the State Officers Compensation Commission which held four meetings in first fiscal year for organizational and first report purposes. Subsequent years reflect "every other year" meeting and report to the legislature.

PERSONAL SERVICES -0-

Fiscal note assumes staff and related expenses will be provided by the Department of Administration per Sec. 14 AS 39.23.230(a)

TRAVEL 24.8

Fiscal note assumes 4 meetings and two teleconferences for public comment prior to Commission report/order in the first fiscal year. Subsequent years reflect no travel activity during off-reporting years and one meeting with two public teleconferences each reporting year. Travel and per diem calculations figures average air fare and per diem expenses for the seven public members.

First Year

Public members:

Airfare	3856 x 4 =	15,424	
Per diem	1470 x 4 =	5,880	21,304

Administrative travel:

Airfare	479 x 3 =	1,437	
Per diem	210 x 3 =	630	2,067

Teleconference per diem for Commission members	1,400		1,400
--	-------	--	-------

TOTAL TRAVEL: 24,771

"Every Other" year

Public members:

Airfare	3856 x 1 =	3,856	
Per diem (per diem based on 3 day meeting)	2100 x 1 =	2,100	5,956

Teleconference per diem for Commission members	1,400		1,400
--	-------	--	-------

TOTAL TRAVEL: 7,356

CONTRACTUAL 36.1

Contractual calculations vary according to reporting/non-reporting years.

First year:

Communication:

Teleconference charges -- 2 @ 4740	9,480	
Postage -- 300/mo x 12	3,600	13,080

Transportation:

Freight and express charges -- 150/mo x 12		1,800
--	--	-------

Advertising, Printing & Binding:

Subscriptions	250	
Advertising -- 6 meetings x 750	4,500	
Annual report	15,000	
Forms, misc.	1,500	21,250

TOTAL CONTRACTUAL: 36,130

Off-reporting year:

Communication:

Postage -- 300/mo x 12		3,600
------------------------	--	-------

Transportation:

Freight and express charges -- 150/mo x 12		1,800
--	--	-------

Advertising, Printing & Binding:

Subscriptions	250	
Forms, misc.	1,500	

TOTAL CONTRACTUAL: 7,150

CONTRACTUAL (continued)

Reporting year:

Communication:

Teleconference charges -- 2 @ 4740	9,480	
Postage -- 300/mo x 12	3,600	13,080

Transportation:

Freight and express charges -- 150/mo x 12		1,800
--	--	-------

Advertising, Printing & Binding:

Subscriptions	250	
Advertising -- 3 meetings x 750	2,250	
Annual report	15,000	
Forms, misc.	1,500	19,000

TOTAL CONTRACTUAL: 33,880

TESTIMONY BY MIKE MCMULLEN ON SB 113

MCMULLEN: Thank you. My name is Mike McMullen. I am the Personnel Manager in the Division of Personnel. I guess it is my dubious honor to present the Administration's position on the bill. I don't think you'll be surprised that the Administration is not in favor of another commission receiving more authority. You've heard several instances what the Governor's position is on boards and commissions, and the same view applies to granting this one here. The position paper and fiscal note is in the process and I apologize that they're not here in time for the meeting, but they will be here and you will see that same information in print.

Besides the general attitude towards boards and commissions, the view of particularly my commissioner is that the legislative salary setting responsibility is that of the legislature. And I appreciate the dialogue between you, Senator Rodey, and Senator Pourchot on that attitude. And the commissioner believes that the legislature should be the body to stand up and take the public scrutiny of adopting legislative salaries. And so in that regard, having legislative salaries set by an independent board and commission, he is opposed to that approach. We are the intent of the legislation because the request is primarily to ensure that the judiciary gets properly paid so that they may retain qualified jurists and.... [END OF SIDE ONE]

[SIDE TWO]

...we are not opposed to a mechanism for dealing with those people, to the same extent that we're opposed to a third party or fourth party making recommendations on legislative and executive branch salaries.

An idea which I ran across that hasn't been floated by anyone -- an approach encompassed in Chapter 47, SLA 1974, may be a mechanism that would deal with judiciary salaries only and it had a formula for increasing salaries annually based on cost of living, that once it is enacted would operate annually and not require a return to the legislature in any sort of manner, that the court has to come begging for pay increases for the judiciary. Just an idea that the committee may want to look at and may find some mileage there.

The fiscal note from the Department of Administration will be a zero fiscal note. The experience we've had with prior salary commissions is that if they indeed ask for assistance from us, it is very minimal assistance -- we can take care of it normally with only a matter of a weeks worth of work from one of our staff members and, therefore, no additional appropriation would be required.

I'd be happy to answer questions.



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 14, 1991

The Honorable Pat Rodey
Chairman, Senate State
Affairs Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Rodey:

Thank you for scheduling Senate Bill 113, establishing a Public Officers' Compensation Commission. This bill was introduced at the request of the Alaska Supreme Court.

SB 113 creates a new Public Officers' Compensation Commission to take the place of the existing State Officers' Compensation Commission. As you know, the existing commission recommends compensation levels for certain state officers to the legislature; its proposals frequently go unheeded for reasons unrelated to their merits.

In contrast, the commission created by SB 113 would have the authority to actually establish compensation levels for the governor, lieutenant governor, members of the legislature, heads of the principal departments, supreme court justices, judges of the court of appeals, judges of the superior court and district court judges. This commission, appointed by the governor, could submit proposed salary, per diem and allowances for those officers to the legislature every two years. These compensation levels would take effect unless disapproved by a bill that was enacted into law within 60 days.

Approximately 26 states, as well as the federal government, currently operate compensation commissions. In nine of those jurisdictions, the commission has the authority to establish compensation amounts. The purpose behind the existence of these

The Honorable Pat Rodey
February 14, 1991
Page 2

commissions is simple: to see that fair decisions are made regarding the compensation of certain government officials, and to reduce the political battles that inevitably surround such salary decisions.

An essential goal of the Alaska Court System is to attract and retain highly qualified jurists. Achieving this goal requires salaries that are commensurate with the qualifications and responsibilities of the office, which has proven problematic. Last session, the legislature approved the first pay increase for judges since 1985. During the 18 month period preceding that pay raise, the judiciary lost 20 percent of its members.

It is equally important to attract and retain highly qualified legislators and executive branch officials. An independent commission will be able to set fair and reasonable salaries for these officers without fear of voter backlash or charges of conflict of interest.

I hope that you will agree with the supreme court on the need for SB 113. Please feel free to contact my office if you require any additional information on this piece of legislation.

Very truly yours,



Arthur H. Snowden, II
Administrative Director

AHS:bh

**Public Officers
Compensation Commission
(establishing)**

SENATE BILL NO. 113, by the SENATE RULES COMMITTEE BY REQUEST. Seeks to establish the Public Officers Compensation Commission in the Office of the Governor to review the compensation of the governor, lieutenant governor, members of the legislature, heads of principal departments of the executive branch of state government, and the judiciary. Membership of the commission will include at least one business executive, one person with experience in public administration, one person with experience in personnel management, one economist, and one lawyer.

The commission will be required to submit a report on its findings every odd-numbered year, during the first ten days of the regular legislative session. The commission can submit an order with the report making changes to the compensation of a public office, but before submitting the report, the commission will have to give reasonable public notice and solicit public comments. It must also give due regard to the public comments received. An order making changes to the compensation rates will become effective 60 days after submission, or at the end of the legislative session during which it was submitted to the legislature, whichever is earlier, unless a bill disapproving the order in its entirety is enacted into law during that period.

—Changes language in sections of Title 22 (The Judiciary) to provide that the compensation of judges of the supreme court, the court of appeals, the superior court, and the district court will be established by order of the Public Officers Compensation Commission.

—Changes language of AS 24.10.100 (Legislature. Officers, Employees and Compensation. Salary of Legislators) to provide that the salary of each member of the legislature will be established by order of the Public Officers Compensation Commission. The commission will be allowed to authorize additional compensation for the president of the senate and the speaker of the house. The commission will also authorize an annual allowance for postage, stationary, stenographic services, and other expenses for each member of the legislature.

—Changes language of AS 39.20.010, 39.20.030, and 39.20.080 (Public Officers and Employees. Compensation and Allowances. Compensation of Governor; Compensation of Lieutenant Governor; Salary of Executive Department Head and Deputy) to provide that the compensation of the governor, lieutenant governor, and heads of departments of the executive branch will be established by order of the Public Officers Compensation Commission.

—Amends AS 39.23.260 (State Officers Compensation Commission. Policy of the Legislature) to provide: "It is the policy of the legislature that the commission determine an equitable rate and form of compensation for the governor, lieutenant governor, members of the legislature, heads of the principal departments of the executive branch, supreme court justices, judges of the court of appeals, judges of the superior court, and district court judges. In determining the compensation for each office, the commission shall consider the following factors: (1) the skill required; (2) the time required; (3) the opportunity for other earned income; (4) the value of public services as performed in other states and in the federal government; (5) the value of similar services when performed in the private sector of this state and other states based on the responsibility and discretion required in the office; (6) the reasonable expenses incurred in performing the public service; (7) the percentage change in the Consumer Price Index for Anchorage ... since the last compensation adjustment; (8) the compensation presently received by the public officers and all other benefits received; ..."

—Repeals AS 22.05.140(c) (Judiciary. The Supreme Court. Compensation); AS 22.10.190(c) (Judiciary. The Superior Court. Compensation); AS 22.15.220(d) (Judiciary. District Courts. Compensation).

—Repeals AS 39.23.200 (State Officers and Employees. State Officers Compensation Commission. Compensation Commission Established); AS 39.23.240 (Duties of the Commission); AS 39.23.400 (Definition).

—Repeals AS 24.10.101 (Legislature. Officers, Employees and Compensation. Compensation of Legislators).

Sections of the bill relating to compensation become law on the date that the orders changing the compensation of the governor, lieutenant governor, members of the judiciary, members of the legislature, and heads of departments are issued by the Public Officers Compensation Commission. Other sections take effect the day after the bill is signed by the Governor.

Introduced February 11, 1991 and referred to State Affairs; Finance.

FEB. 19, 1991
LEGISLATIVE REPORTING SERVICE
REPORT # 4

1991 LEGISLATION
POSITION PAPER
DEPARTMENT OF ADMINISTRATION

Division Personnel Bill Number SB113

Bill Title Public Officers Compensation Commission

Position Statement: Explain briefly what bill does, its impacts and Department's position, i.e. a) support, b) do not support, c) neutral or d) oppose.

The Department of Administration opposes expansion of the authority of the Public Officers Compensation Commission.

Senate Bill 113 would expand the authority of the renamed Public Officers Compensation Commission. The new authority includes setting the compensation of the governor, lieutenant governor, members of the legislature, heads of principal departments of the executive branch, and all judges and justices of the Alaska Court System. Currently, the commission can issue only findings and recommendations. Under SB 113, the commission would issue an order that in the absence of legislative action changes the compensation of the Public Officers listed in the bill. The Commission's order becomes effective 60 days after submission to the legislature unless a legislative bill disapproving the order in its entirety is enacted into law before the effective date.

The intent of this bill is to assign responsibility for setting the salaries of elected and top level officials to the Commission. It will not work. The final authority for approving or disapproving changes to the salary structure still rests with the legislature. The expansion of the authority of the Public Officers Compensation Commission does not change that fact. Elected officials should vote on and assume direct responsibility for increases to the salaries of the positions that they hold.

We support the current role served by the Commission.

APPROVED:

Director David K. F. Otto Division Personnel
print name

Signature *Lynda Ruff (acting Director)* Date 2-20-91

Commissioner Millett Keller

Signature *Millett Keller* Date 2/20/91

(For more information, call Barbara Pritchett 465-2200)

Rev. 1/23/91

**1991 LEGISLATION
POSITION PAPER
DEPARTMENT OF ADMINISTRATION**

Division Labor Relations **Bill Number** SB 113

Bill Title An Act Establishing the Public Officers Compensation Commission

Position Statement: Explain briefly what bill does, its impacts and Department's position, i.e., a) support, b) do not support, c) neutral or d) oppose.

The bill effectively transforms the current Public Officers Compensation Commission (POCC) from an advisory body on salaries for various public officers, into a formal salary setting body whose pay orders are subject to express legislative rejection but do not require express approval before taking effect. The POCC would set salaries for legislators, judges, justices, magistrates, the Governor, the Lt. Governor, and all commissioners; none of these officers are subject to collective bargaining. Nevertheless, the de facto ability of the POCC to grant pay raises to upper management may set undesirable precedent for wage negotiations with collective bargaining units. The factors to be used by the POCC in salary setting are largely the same factors used in bargaining. Consequently, there exists a strong possibility of conflicting wage-setting policies, with deleterious effects on the employers' position as the bargaining table.

We oppose this proposal.

APPROVED:

Director Bruce Cummings **Division** Labor Relations

Signature *Bruce Cummings* **Date** 2/10/91

Commissioner Millett Keller
Signature *Millett Keller* **Date** 2/21/91

(For more information, call Barbara Pritchett 465-2200)

Rev. 01/28/91

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 113

Revision Date: _____

Department Affected: Administration

Title: Public Officers Compensation Commission

BRU: Personnel

Sponsor: Rules by Request (of Court System)

Component: Personnel

Requestor: _____

COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Experience with the two earlier compensation commissions indicate that the level of assistance requested is minor, and consists of readily available information. The added costs have been, and we expect them to continue to be, negligible.

Prepared by: David K. F. Otto *DKFO*
Division: Personnel

Phone: 465-4430
Date: February 19, 1991

Approved by Commissioner: Millett Kelle *Millett Kelle*
Agency: Administration

Date: 2/21/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

S B

1 2 2



MAR 25 RECD

March 20, 1987

Members of the Alaska Legislature
Pouch V
Juneau, Ak. 99811

Honorable Members:

The Alaska Zoo would be honored to accept the designation of our Marmot as the Senior Hoary Marmot,....the Official State Marmot ... for the State of Alaska.

We would appreciate the advice of the Legislature, should they pass this legislation.

Sincerely,

Donna Rychetnik
President



Alaska State Legislature

Senator Curt Menard



While in Session:
P.O. Box V
Juneau, Alaska 99811
(907)465-2679

Interim:
165 E. Parks Highway
Wasilla, Alaska 99687
(907)373-2878

Senate District
E

ALASKA MARMOT DAY

After the long days of winter when thoughts turn to the coming of spring, let's say around February 2nd, Americans turn to the venerable weatherman, the groundhog, to share his insights on winter and spring.

And that means that here in the Great Land, Alaskans have long had to rely on Outsiders to forecast our climatic future.

Since we are different, since we are unique, for Alaskan winters we need our own local prognosticator - Fellow Legislators, we need our own Marmot Day.

Who could be better qualified to advise Alaskans on lengthy winters but our own native Hoary Marmot?

While it is true a few carpetbagging groundhogs have jumped the border and come in around Northway, we should endorse our own Alaskan weatherman, and for that, I respectfully suggest, the Hoary Marmot who ranges from Ketchikan to Anaktuvuk Pass, who with his cousin the Arctic Marmot covers virtually the entire State of Alaska, is best suited.

In Alaska we should recognize February 2nd as Marmot Day, and stop the continued gawking at Lower 48 Groundhogs; we need to promote our Alaska Hire Policy right down to the last Marmot. It's time to retire Punxsutawney Phil of Pennsylvania and rely on Smoke Alarm, presently chief Marmot at the Zoo in Anchorage.

Legislative Colleagues - I propose that the senior Hoary Marmot housed at the Alaska Zoo, now known by the name of Smoke Alarm, be recognized as the Official State Marmot, and that his successors continue to be so honored into perpetuity.

Consider the publicity for our fine Zoo, think of Alaskan schoolchildren celebrating February 2nd as Marmot Day, and look forward to Alaskans everywhere awaiting the judgement of our own venerable senior Hoary Marmot on the evening news.

For the aforementioned reasons and in accordance with solid Alaskan common sense, I urge your swift consideration and support in establishing Alaska Marmot Day. Thank you and warm regards,

Curt Menard





The **MARMOT** in Alaska



Alaska Department of Fish and Game Wildlife Notebook Series

The hoary marmot (*Marmota caligata*), the Alaska marmot (*Marmota broweri*), and the woodchuck (*Marmota monax*) are the three species of marmots that live in Alaska. The hoary marmot can be found at the bases of active talus slopes in the mountains of central, southeastern, and southwestern Alaska. It also occurs down to sea level along some areas of the coast. The Alaska marmot lives in similar talus habitat throughout much of the Brooks Range, and the woodchuck digs its dens in loess (wind-deposited) soils along river valleys in the dry lowlands of eastcentral Alaska.

General Description: Large relatives of the squirrel, the hoary and closely related Alaska marmots occurring in the State weigh 10 pounds or more and may exceed 24 inches in total length. The woodchuck weighs between 2 and 6 pounds and can measure up to 20 inches long. The animals attain their maximum weight in late summer, when they accumulate thick layers of fat which will sustain them through winter hibernation. Body shape is similar in all three species: head short and broad, legs short, ears small, body thickset, tail densely furred, and front paws clawed for digging burrows. Hoary and Alaska marmots are predominantly gray, with a darker lower back and face and a dark, reddish tail. The hoary marmot has a white patch above its nose and usually has dark brown feet, giving it the Latin name *caligata*, meaning "booted." The Alaska marmot does not have a white face patch, its feet may be light or dark, and its fur is much softer than the stiff fur of the hoary marmot. A uniform reddish brown, the woodchuck has an unmarked brown face. The name woodchuck originated as "wuchuk," a Cree Indian word used to describe a number of similar-sized animals, and does not describe characteristics of the woodchuck's behavior or habitat preference.

History: In Alaska, all marmots mate in April or May. About a month later, two to six young are born hairless and blind. The young disperse 2 months after birth and may breed for the first time when they are 2 or 3 years old. Marmots may live to be 5 years old or more. They feed on grasses, flowering plants, berries, roots, mosses, and lichens.

Hoary and Alaska marmots make their summer homes on the bases of active talus slopes, where the rocks protect them from predators and provide lookout stations. Woodchuck dens may be up to 30 feet long, are dug in the loess soils of river valleys in Interior Alaska, and end with a chamber containing a large grass nest. Most marmot dens have a main entrance with a mound of dirt near the hole and a number of concealed entrances. Marmots are social animals. Although each family has a separate burrow, these burrows are located near each other, forming a colony.

Spring is nigh as Phil fails to see shadow

Associated Press

PUNXSUTAWNEY — Punxsutawney Phil, America's premier groundhog, emerged from his burrow today and indicated in "unmistakable groundhogese" that he had failed to spot his shadow, a sure sign spring is just around the corner, according to Phil's followers.

"He stood proud, tall, and confident, surveyed the throng of loyal followers, peered skyward toward the east, and then fixed his eyes groundward," said county Judge Edwin Snyder. He is a member of the exclusive Punxsu-

See Spring, Page 12 ▶

Spring is on way, Phil says

▶ Continued from Page 1

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Snyder said Phil "turned to Groundhog President Jim Means and signaled to him in unmistakable groundhogese, 'There is no shadow today.'"

The squirming, 10-pound woodchuck was pulled from his man-made burrow atop Gobbler's Knob at sunrise, 7:27 a.m. Means held the groundhog up to his ear to hear the once-a-year prediction, then lifted him toward Snyder.

The approximately 1,500 people who had gathered under cloudy skies and in light rain cheered as Phil's forecast was announced.

"I've always wanted to come to this event ever since I was a kid," said Peter Teicher, 49, of Los Angeles. "I'm really excited. I couldn't sleep last night. It's a real thrill."

Other prognosticating groundhogs around the country followed Phil's lead and also failed to see their shadows.

Legend has it that if the famous groundhog sees his shadow when he emerges from his bungalow at sunrise on Feb. 2, there will be six more weeks of winter. If he doesn't, spring supposedly is just around the corner.

"You know and I know that Feb. 2 is too darn early to expect spring to come," said Tim Clark, executive editor of "The Old Farmer's Almanac."

But the two-legged variety of weather forecasters still are curious about what Phil has to say on Groundhog Day.

"I definitely do watch to see what he does. I didn't say I believe it. I say I watch it," said Albert Peterlin, a hydrologist for the National Weather Service in Har-

"This has a little bit of history and fact," he said. "Animals respond to temperature and environment as it occurs."

Before today, Phil had predicted an early spring only nine times since 1887, when German-born farmers initiated the yearly event in this small western Pennsylvania town.

The farmers borrowed from the legend of Candlemas, a Christian holiday celebrating the first time the infant Jesus was taken to the temple. An old Scottish couplet claims, "If Candlemas be fair, there'll be two winters in the year."

Groundhogs, part of the rodent family, usually hibernate by December and stay underground until April or so, but sometimes venture out early if the weather is mild.

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The National Weather Service is calling for a warmer than usual February, but a colder than usual March and April.

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Groundhog Octorara Orphie also saw no shadow in central Pennsylvania's Quarryville. And neither did West Virginia's Concord Charlie.

1990

CORRECTION

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

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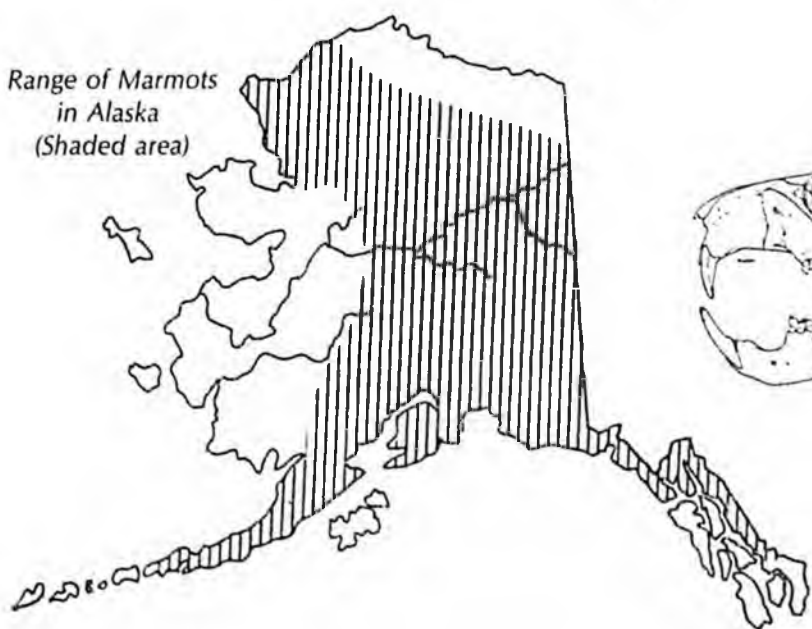
True hibernators, marmots enter a state of torpor in winter, all bodily functions are reduced. Hoary marmots and woodchucks hibernate alone in the same burrow in which they spend the summer. To protect themselves from the cold, they plug the tunnel leading to the nest chamber with a dirt, vegetation, and feces mixture. They emerge from their winter hibernation in April or early May to find food and mates. Adapted to the harsher winter climate of the Brooks Range, Alaska marmots create a special winter den, which has a single entrance and is characteristically located on an exposed ridge that becomes snow-free early in spring. The entrance is plugged after all colony members are inside, and no animals can leave until the plug thaws in early May. Consequently, Alaska marmots mate before they emerge from their winter den. These winter dens are relatively permanent for each colony, and some are used for more than 20 years. Because hibernation begins in September, most marmots in Alaska spend two-thirds of each year locked in their winter dens.

Marmots are most active in early morning and late afternoon, although they may leave their burrows during other daylight hours. Marmots need wind to control mosquito levels and rarely venture out on calm days. The Alaska marmot marks its territory by rubbing secretions from its face glands on rocks and along trails. The hoary marmot probably marks its territory in the same way.

The pelt colors of marmots help them blend with the lichen-covered rocks or rusty-brown soil of their surroundings. Nevertheless, marmots remain very wary and alert for predators including eagles, foxes, coyotes, wolves, and bears. When the Alaska marmot is alarmed, it produces a slurred, low-pitched warning call. The alarm call of both hoary marmot and the woodchuck is a loud whistle. They also hiss, squeal, growl, and yip. In areas where marmots are hunted by humans, they have learned to remain quiet when humans approach. Good climbers and swimmers, woodchucks may also take to trees or water to avoid predators.

Marmots often secondarily benefit other animals and plants. Abandoned marmot holes can become homes for small mammals. In moderation, their digging and defecation loosen, aerate, and improve the soil. Alaska Natives have long relished marmot meat and have used its thick coat for warm clothing. Although these wary animals are difficult to approach closely, persistent observers are rewarded by the fascinating sight of a marmot community.

Catherine Curby
1982



Spring is nigh as Phil fails to see shadow

Associated Press

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1990

Here's the truth about groundhogs

By **DEBBIE MCKINNEY**
Daily News reporter

Today is Groundhog Day, that glorious day when groundhogs emerge from hibernation to see — or not see — their shadows, thereby forecasting the arrival of spring.

Perhaps your favorite groundhog, woodchuck, whistlepig — or hoary marmot, the Alaska version — is sound asleep inside his burrow. Fret not. A gardening expert at the Washington Post offers readers this tip for perking up the little prognosticators:

Mix three quarts of ammonia in a quart of water. Poke a garden hose

down the groundhog's hole. Insert funnel into the other end of the hose. Pour.

"The groundhog will flee the tunnel," this tip-of-the-week states. Simply stop him on his way out and inquire about the weather.

But what's this? Science has not confirmed the

forecasting powers of the groundhog? This is what World Book encyclopedia says. How can that be?

Obviously, science is slacking off on the job.

Surely science doesn't

Please see Page D-2.
GROUNDHOG



Anchorage Daily News illustration/Pamela Dunlap-Shohl

GROUNDHOG DAY: Here's the truth, really

Continued from Page D-1

consider psychic groundhogs an unworthy pursuit! Wasn't it two Yale researchers who completed a study recently verifying once and for all that dogs are man's best friend and that frogs enjoy a slightly higher degree of popularity in American culture than gorillas? Your tax dollars at work. So why has the scientific community ignored the groundhog and his obviously beneficial contribution to man?

Apathy, no doubt. Most Americans don't know the first thing about groundhogs, so there have been no marches on Washington demanding the studies be done.

Does the average American know, for instance, that the male groundhog, when looking for a woman, sits at her doorway wagging his tail in friendly dog fashion until invited to come in? Or that the groundhog has been trained to perform circus acts? Or that a lonely groundhog in captivity once tried to talk to an idling vacuum cleaner?

I think not.

Therefore, we've prepared this simple groundhog literacy test. Please read each question carefully before answering "true" or "false."

1. A groundhog is a rodent.
2. Groundhog babies are cute.
3. The groundhog's number one enemy is the fox.
4. A groundhog's psychic ability is limited to predicting the arrival of spring.
5. When cornered, the groundhog will dig himself deep into his hole.

Now let's see how you did. The correct answers are as follows: False, False, False, False, False.

The groundhog is not a rodent, but a term of endearment for obnoxious people who park their Saab Turbos sideways in parking lots to protect the paint.

Groundhogs have been known to accurately predict baseball scores and the relative weight of Tammy Bakker's eyelashes.

In addition to the weather, groundhogs have been known to accurately predict baseball scores and the relative weight of Tammy Bakker's eyelashes.

Groundhog babies, born naked and blind, are about as cute as oyster shooters.

The groundhog's number one enemy is the gardening expert at the Washington Post.

And finally, when cornered, it's Mayor Tom Fink who digs himself deeper in a hole, not the groundhog.

Now that we've established that the average American knows virtually nothing about the groundhog, allow us to divulge a previously undisclosed fact — the real reason why science has been reluctant to nail down, once and for all, the accuracy of groundhog predictions.

You'd better sit down.

Being as this is a newspaper and newspapers are devoted to the truth, we believe you have a right to know what science already knows: groundhogs don't give a whoop-de-do about predicting the arrival of spring.

There is, however, a very good reason why they occasionally crawl out of their dens in the middle of winter, lured by a force beyond their control, according to Grzimek's Animal Life Encyclopedia.

You see, they gotta pee.

SB

131

7-LS0635NG ✓
Bannister
3/4/91

CS FOR SENATE BILL NO. 131 (State Affairs)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS DUNCAN, Adams

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the notice requirements for the adoption, amendment, or repeal of
2 regulations, for the meetings of public agencies, and for state elections."

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

4 * Section 1. AS 15.15.010 is amended to read:

5 Sec. 15.15.010. GENERAL ADMINISTRATIVE SUPERVISION BY DIRECTOR. The
6 director shall provide general administrative supervision over the conduct of state elections, and
7 may adopt regulations under the Administrative Procedure Act (AS 44.62) necessary for the
8 administration of state elections. The director shall adopt regulations that establish for the
9 broadcasting of notices under AS 15.15.070 the frequency of the broadcasts, appropriate
10 broadcast times, and the locations for the broadcasts. The broadcasting regulations must
11 be reasonably calculated to provide the widest possible exposure of the notices.

12 * Sec. 2. AS 15.15.070(d) is amended to read:

13 (d) The first [FIRST] publication, broadcast, or posting of the notice shall [IS TO] be
14 made not less than 10 days before the election.

1 * Sec. 3. AS 15.15.070(f) is amended to read:

2 (f) Additional notice shall be given of all bond issues, initiatives, referendums, and
3 propositions by use of newspapers, television, radio, printed posters, maps, and similar means of
4 communication considered necessary. The director may not be required to post, broadcast, or
5 publish notices except those provided for in this section.

6 * Sec. 4. AS 15.15.070 is amended by adding a new subsection to read:

7 (h) An abbreviated form of the notice published under (b) of this section shall be
8 broadcast on one or more radio or television stations in each of the four major election districts.
9 The broadcast notice must include at a minimum the date of the election, the hours between
10 which the polling places will be open, the names of the newspapers in which the notice is
11 published, and the dates of publication in the newspapers.

12 * Sec. 5. AS 44.19.020 is amended to read:

13 Sec. 44.19.020. DUTIES OF THE LIEUTENANT GOVERNOR. The lieutenant
14 governor shall

15 (1) administer state election laws; [,]

16 (2) appoint notaries public;

17 (3) adopt regulations under AS 44.62 (Administrative Procedure Act) that
18 establish for the broadcasting of notices under AS 44.62.190 and 44.62.310(e) the frequency
19 of the broadcasts, appropriate broadcast times, and the locations for the broadcasts; the
20 regulations must be reasonably calculated to provide the widest possible exposure of the
21 notices.

22 * Sec. 6. AS 44.62.190(a) is amended to read:

23 (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of
24 the proposed action shall be

25 (1) published in the newspaper of general circulation [,] or trade or industry
26 publication [,] that the state agency prescribes and in the Alaska Administrative Journal; in the
27 discretion of the state agency giving the notice, the requirement of publication in a newspaper
28 or trade or industry publication may be satisfied [SUPPLEMENTED] by broadcasting the notice
29 or an abbreviated form of the notice by television or radio, or by using a combination of
30 publication and broadcasting;

31 (2) mailed to every person who has filed a request for notice of proposed action

1 with the state agency;

2 (3) if the agency is within a department, mailed or delivered to the commissioner
3 of the department;

4 (4) when appropriate in the judgment of the agency,

5 (A) mailed to a person or group of persons whom the agency believes is
6 interested in the proposed action, and

7 (B) published in the additional form and manner the state agency
8 prescribes;

9 (5) furnished the Department of Law together with a copy of the proposed
10 regulation, amendment, or order of repeal for the department's use in preparing the opinion
11 required after adoption and before filing by AS 44.62.060;

12 (6) furnished to all incumbent State of Alaska legislators and the Legislative
13 Affairs Agency;

14 (7) furnished to the standing committee of each house of the legislature having
15 legislative jurisdiction over the subject matter treated by the regulation under the Uniform Rules
16 of the Alaska State Legislature, together with a copy of the proposed regulation, amendment, or
17 order of repeal for the committee's use in conducting the review authorized by AS 24.05.182;

18 (8) furnished to the staff of the Administrative Regulation Review Committee.

19 * Sec. 7. AS 44.62.310(e) is amended to read:

20 (e) Reasonable public notice shall be given for all meetings required to be open under
21 this section. The notice must include the date, time, and place of the meeting [,] and, if the
22 meeting is by teleconference, the location of any teleconferencing facilities that will be used.
23 Except for the publication required by AS 44.62.175(a) in the Alaska Administrative Journal, the
24 notice may be given, in the discretion of the public agency giving the notice, by using print
25 media, [SUPPLEMENTED BY] broadcast media, or a combination of print and broadcast
26 media.

7-LS0635ND ✓
Bannister
3/1/91

CS FOR SENATE BILL NO. 131 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS DUNCAN, Adams

A BILL

FOR AN ACT ENTITLED

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2 regulations, for the meetings of public agencies, and for state elections."

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10 published, and the dates of publication in the newspapers.

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22 (1) published in the newspaper of general circulation [,] or trade or industry
23 publication [,] that the state agency prescribes and in the Alaska Administrative Journal; in the
24 discretion of the state agency giving the notice, the requirement of publication in a newspaper
25 or trade or industry publication may be satisfied [SUPPLEMENTED] by broadcasting the notice
26 or an abbreviated form of the notice by television or radio, or by using a combination of
27 publication and broadcasting;

28 (2) mailed to every person who has filed a request for notice of proposed action
29 with the state agency;

30 (3) if the agency is within a department, mailed or delivered to the commissioner
31 of the department;

- 1 (4) when appropriate in the judgment of the agency,
2 (A) mailed to a person or group of persons whom the agency believes is
3 interested in the proposed action, and
4 (B) published in the additional form and manner the state agency
5 prescribes;
- 6 (5) furnished the Department of Law together with a copy of the proposed
7 regulation, amendment, or order of repeal for the department's use in preparing the opinion
8 required after adoption and before filing by AS 44.62.060;
- 9 (6) furnished to all incumbent State of Alaska legislators and the Legislative
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- 11 (7) furnished to the standing committee of each house of the legislature having
12 legislative jurisdiction over the subject matter treated by the regulation under the Uniform Rules
13 of the Alaska State Legislature, together with a copy of the proposed regulation, amendment, or
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- 15 (8) furnished to the staff of the Administrative Regulation Review Committee.

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21 notice may be given, in the discretion of the public agency giving the notice, by using print
22 media, [SUPPLEMENTED BY] broadcast media, or a combination of print and broadcast
23 media.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 131

Revision Date: _____ Department Affected: Division of Elections

Title: Relating to notice requirements BRU: Elections
for adopt., amend., repeal of regs & elect Component: Primary & General

Sponsor: Sen. Duncan

Requestor: Senate State Affairs COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	10.0	30.0				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	30.0				

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	10.0	30.0				
FEDERAL FUNDS						
OTHER						
TOTAL	10.0	30.0				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.) The Division would broadcast the election notices for 5 days, twice a day statewide. The above costs relate to one statewide REAA election in FY 92 and one statewide REAA, the primary and general elections in FY 93. Special elections would be in addition to these costs.

Prepared By: Elizabeth A. Ziegler, Dep. Director Phone: 465-4611

Division: Division of Elections Date: 3-1-91

Approved by Commissioner: *[Signature]*

Agency: Division of Elections Date: 3-1-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska State Legislature



SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811-3100

(907) 465-4766

COMMITTEES:
FINANCE
VICE CHAIR —
HEALTH EDUCATION
& SOCIAL SERVICES
BUDGET & AUDIT
BANKING &
ECONOMIC
DEVELOPMENT

To: Senator Pat Rodey
Chair
State Affairs Committee

From: Senator Jim Duncan

Regards: Hearing for SB 131

Date: February 20, 1991

I request the earliest possible hearing for Senate Bill 131 by the Senate State Affairs Committee.

The objective of this measure is to allow the more extensive use of broadcast for the required public notice of state elections, regulation changes and public meetings.

Sections one through three of the measure relate to the public notice of elections. A requirement is made that notice of an election be broadcast in each of the four major election district. This proposed change mirrors the requirement for published public notice of an election. My measure calls for an abbreviated form of the notice requiring cross promotion with the selected publications.

Section four provides for the use of broadcast for public notice of actions regarding regulations. Broadcast may be used to satisfy the public notice requirement or used in combination with published notice at the discretion of the public agency.

Section five addresses public notice for meetings and also allows the use of broadcast or print or a combination to satisfy public notice requirements. Again, the form of public notice is left to the discretion of the agency.

The advantages of using broadcast for public notice are obvious. The use of broadcast will increase the likelihood that the public is notified of matters regarding regulations and public meetings. In many cases it may be more appropriate to use broadcast as the form of public notice for meetings, public hearings, emergency related announcements and other functions of state government. Some forms of public notice, such as invitations to bid and others requiring a high degree of flexibility, do not make themselves entirely suitable to broadcast due to time limitations, although I believe the use of broadcast would serve as an excellent tool for cross promotion of the detailed information published by the print media.

The Legislature approved a bill last year allowing the use of broadcast for public notice to supplement required print notice. Providing state agencies the flexibility to use broadcast for public notice more extensively, as proposed in this legislation, will help increase the possibilities of ensuring Alaskans are informed of these matters.

Your consideration of my request is appreciated.

SECTION ANALYSIS
SB 131

Section 1

Adds broadcast to the 10 day minimum requirement for announcing a state election.

Section 2

A technical amendment adding the word "broadcast".

Section 3

A new section calling for an abbreviated form of the election notice to be broadcast on one or more radio or television stations in each of the four major election districts. This new section also outlines the minimum information which must be included in a broadcasted public notice.

Section 4

Except for publication in the Alaska Administrative Journal, adds language giving a state agency flexibility to publish or broadcast, or to use a combination of print and broadcast, for required public notice relating to regulations.

Section 5

Except for publication in the Alaska Administrative Journal, adds language giving a state agency flexibility to publish or broadcast, or to use a combination of print and broadcast, for required public notice relating to public hearings and meetings.

S B

1 3 5



**Alaska
Troopers Chapter**

Public Safety Employees Association, Inc.
"Representing Alaska's Finest"

P.O. Box 92624, Anchorage, AK 99509-2624

(907) 276-6464

A handwritten signature in cursive, possibly reading "P. Piazza", is located in the top right corner of the page.



**Airport Safety
Officers Chapter**

March 11, 1991

Senator Jim Duncan
Mail Stop 3100
P.O. Box V
Juneau, AK 99811

Dear Senator Duncan:

Senate Bill No. 135 provides for the appointment of the Director of Personnel by the Personnel Board rather than by the Commissioner of Administration. In addition the bill increases the requirement for more professional experience. Our Association strongly believes this change would bring better continuity and professionalism to the State while lessening the impact of political change.

These changes could instill a more responsible personnel policy hopefully resulting in a fiscally stable relationship with employees. Such could only benefit the State. We urge your support in passing such beneficial legislation.

Sincerely,

A handwritten signature in cursive, reading "Piazza", is written above the typed name.

Robert M. Piazza
Business Manager

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 135

Revision Date: _____
Title: State personnel system and membership of PERS Board.

Department Affected: Administration
BRU: Personnel
Component: Personnel

Sponsor: Duncan
Requestor: Senate State Affairs

COMPONENT SERIAL NO.

		5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL	3.3	6.7	6.7	6.7	6.7	6.7
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3.3	6.7	6.7	6.7	6.7	6.7

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	3.3	6.7	6.7	6.7	6.7	6.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

This bill is effective January 1, 1992, or mid way through FY 92. The added costs are for two additional members on the Personnel Board. We assume four meetings of the Board per year and that the new members will have to travel for the meetings.

Prepared by: David K. F. Otto *Richard P. Du Zuelha*
Division: Personnel

Phone: 465-4430
Date: 2/28/91

Approved by Commissioner: Millett Keller *Millett Keller*
Agency: Administration

Date: 3/1/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

TESTIMONY BY DIANA DESIMONE ON SB 135
March 1, 1991 - Senate State Affairs Committee

Senator Duncan asked me to comment on this piece of legislation, and I can't tell you how much I've wanted to do so, simply because it's a wonderful way of contacting old friends, too. You've probably seen me testify before you a few years ago when I was director of personnel.

In my mind, the issue before you is how to provide not just the insulation for the merit system, but also accountability to the public, because I believe in my many years I found that what we do with that public input is crucial. A board appointed director, of course, would have this kind of direct input. I recall an intense public interest in how public employment was gained from my many years in Alaska, and I would be surprised if that interest has changed in the short time since I've left.

Although Mr. McMullen is correct in that many of the rules are only dealing with employees, I believe that the issue to the public is in how to get public jobs, and the merit system appointments is what I think is a crucial area that you need to be dealing with.

Unfortunately, or maybe fortunately, the public doesn't have a single interest, or a single preference in any one employment process, and employees, non-employees all have different needs and interests. And those differences, believe me, are not easy to reconcile with each other. I have spent

many of my years trying to reconcile and trying to get a balance to that, and input from only source is not going to help to get that balance.

One of the things that a board-appointed director would provide is the representation and the direction over a long period of time. I have to say that I was the beneficiary of two different methods of selecting people in the merit system. I spent many years in the classified service and then I got what might have been considered political appointments to the highest position in the Division of Personnel, so I'm certainly not having any axe to grind about what has gone on before, but I also know that the public input was always a difficult area to integrate with all of the directions from above. It isn't always only the direction from the top political appointee. There are just too many interesting concerns that need to be taken into account.

I also want to say that the Personnel Board is not a new board -- you're not looking adding a board; it has existed for decades. And the board has seen, not just the development of the merit system, but the advent of collective bargaining, many changes of administration, and all the changes associated with the Civil Rights Act and Supreme Court decisions related to employment. I found that the board is not only dedicated and objective, but it hasn't been afraid to tackle difficult issues. We're not dealing with a new board here. We're dealing with - even though the people may be different - a

very experienced and historically active board.

I also strongly support increasing the experience required, and defining that it is professional personnel experience. I've had a 17-year perspective on this issue, and I can testify to the increasing complexity of public personnel management over those years. The Federal Government, both through laws and court decisions, has made this area ever changing, and particularly the area of employee selection, which is really the thrust that I'm trying to give in my testimony. I think that is a critical area in terms of personnel management as it relates to the public. Alaska has not been exempt from these issues, to the contrary, the Wards Cove decision, the recent decision was one of the pivotal Supreme Court decisions in changing decades of civil rights decisions, and that came out of Southeast Alaska.

The director, I believe, must have the professional experience to identify the areas that are changing, that need to change, and to implement those changes upon the approval of the board or of whatever body is making the approval on those changes.

I worked for many years with three-member boards, and I was amazed that they were able to accomplish the work that they had - not with just the Personnel Board, but also as the labor relations agency and as the core group of the Retirement Board. A five-member board would not only allow for additional representation of groups that may through chance

alone not be able to be represented in a three-member board, but would also allow some sharing of what has turned out to be a very heavy work load with the extreme complexity of personnel management. So I support that recommendation as well the added requirement that the board members have demonstrated an interest in personnel management issues. I don't think its a board where you can have a trainee capacity in terms of learning what is important.

And finally, the issue of public hearings, I think, is critical. It may take a little bit extra time and money, but I think in the many years I've been in personnel was that if you don't have that, you spend a lot more money and time trying to clean up after the changes you need to do because you haven't taken those ideas and concerns into account to begin with.

I'd be happy to answer any questions you have.

TESTIMONY BY GREG O'CLARAY ON SB 135
March 1, 1991 - Senate State Affairs Committee

Senator Rodey, Senator Pourchot, I'm here today representing the affiliate of the Marine Engineers, the Confidential Employees Association. This particular bill is one that they showed some interest in last year, and I'm here today to testify in favor of this bill.

The Confidential Employees represent primarily people that work with the personnel and within the personnel system. Generally, I think the critical area here is not so much issues of collective bargaining or issues of wages or working conditions for state employees with respect to how the director of personnel interacts. It's with respect to classification, opening registers and hiring practices. This organization that works more closely than any other group of employees with the personnel system itself and the director of personnel is supporting the bill on the basis of further insulating the director of personnel from the political process, and it is seen by that group as a very positive step, in addition to the expansion of the board, to get a broader cross-section of Alaskans involved in the public employment system.

TESTIMONY BY BRUCE LUDWIG ON SB 135
March 1, 1991 - Senate State Affairs Committee

Mr. Chairman, Senator Pourchot. My name is Bruce Ludwig and I'm the business manager for the Alaska Public Employees Association, and we support this bill.

We believe that the personnel system used to have credibility with labor. There was a time when the director of personnel was a classified employee for that purpose of insulating from political involvement and political pressure. And that remained, even after he became a partially exempt employee. In somewhere about 1982 or 1983, that started to change and politics got to be a lot more involved in the whole process. It got to the point where even deputy directors for administrative services were being put in the PX service and that was being upheld by the Personnel Board. There wasn't that scrutiny being put over by the Division of Personnel that used to be when the director was classified.

In 1987, when state employees were locked in a labor dispute with Governor Cowper, they used the Personnel Board as a whipping boy to get the unions in line. They went into the Personnel Board before they had any contracts and set a 40-hour work week to get the Personnel Board to change the work week in the personnel rules. I thought it was interesting when Mr. McMullen testified about the interaction between personnel and labor relations and why it's important to have those two functions together. We have a suit going

on right now before the Supreme Court on the bargainability of classification rates, whether a clerk typist III makes \$8 an hour or \$9 an hour. Now that's something that in common sense tells you that that's a bargainable issue. Our labor relations agency, and it was upheld by Superior Court, said, "No, that's not a bargainable issue, because the Division of Personnel has the responsibility of classified employees." And that's on appeal to the Supreme Court, but the Superior Court upheld that position. So it's even more critical to have an insulated system of setting rates and doing annual salary surveys to come up with those when you're not allowed to really bargain your wage rates like the law leads you to believe.

The current Personnel Board is a reactive group. When Governor Cowper came in with the 40-hour work week, they didn't have the option of saying, "No, you know we could do 35 hours, or we'd go 39-1/2 hours." They can only approve or deny what the Commissioner of Administration gives them. They've got no authority at all to make any changes, even a comma. You know, it's either approved or denied.

It's also interesting that the administration is opposing this bill, because when Governor Hickel ran for governor in 1966, one of his major campaign platforms was the creation of a civil service commission. And if it was a good idea then, it's probably a good idea now, and we'd ask you support the bill.

TESTIMONY BY BUDDY MAUPIN ON SB 135
March 1, 1991 - Senate State Affairs Committee

Just a couple of brief comments. I'm Buddy Maupin, Business Manager of AFSCME Local 52, 8,500 members in the general government unit.

I think Bruce Ludwig said it best, and I just want to echo our support for this bill. We supported it last year and we would like to see it enacted this year. We think that it would improve the quality of public service. It would depoliticize the work of classified employees, and it's good public policy. Our organization supports it.

Thank you.



Official Business

COMMITTEE:

SENATE STATE AFFAIRS

DATE: 3/1/91

SIGN-IN

Subject of meeting:

SB 135 PERSONNEL BOARDS/PERSONNEL OFFICERS

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Bruce Ludwig	340 N. FRANKLIN ST, JUNO	586-2334	APEA/AFT	YES
Greg O'Clair	124 FRONT ST JUNO	586-6040	CEA/MEBA	YES
Pete Duncan For Sen. Duncan	CAPITOL - RM 119	5-4766	SEN. DUNCAN	YES
Mike McMullen	Box C Juneau AK 99811	465-4430	Dept. of Admin	Yes
Bruce Cummings	Box C-0220, Juneau 99811	465-4403	Admin/Union Relations	If ?'s

Alaska State Legislature




SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811-3100

(907) 465-4766

COMMITTEES:
FINANCE
VICE CHAIR —
HEALTH EDUCATION
& SOCIAL SERVICES
BUDGET & AUDIT
BANKING &
ECONOMIC
DEVELOPMENT

To: Senator Pat Rodey
Chair
Senate State Affairs Committee

From: Senator Jim Duncan 

Subject: Hearing for SB 135

Date: February 22, 1991

I would appreciate the earliest possible hearing for Senate Bill 135 by the Senate State Affairs Committee.

The object of this measure is to provide insulation from political influence for the merit system of employment. I feel this is our responsibility as lawmakers since Article XII, Section 6 of the Alaska Constitution directs the Legislature to establish a merit system of employment. This goal is accomplished through various amendments to AS 39 proposed in SB 135.

The bill expands representation on the Personnel Board and provides it the duty of appointing the Director, Division of Personnel. The board is increased from three to five members and responds to concerns raised in the past by minority and rural groups by designating representation of these groups on the board. The other seats are designated as management, labor and public. The bill requires board members to support and possess a demonstrated interest in the application of merit principles to public employment.

Senate Bill 135 provides continuity in management of the merit system by providing for appointment of the Division of Personnel Director by the board. The Director traditionally changes with each change in the administration because it is a direct political appointment. With adoption of this measure an overlap between administrations is not possible, but probable. Current law directs the Commissioner of Administration to appoint the Director. This system proposed in SB 135 is currently used for the appointment of Commissioners in the Departments of Education and Fish and Game.

There is also precedence in other states for my proposal. The director is appointed by a board in five states. Five other states have adopted a system other than direct appointment control by the Governor or department head. In some cases this involves selection by competitive exam. Additionally, three states narrow the appointment power of the Governor by restricting the choice to those recommended by the Personnel Board or those passing a competitive exam. Complete information on the practice of other states presented by the National Association of State Personnel Executives and the Council of State Governments is attached.

Other changes proposed in SB 135 include:

- Increasing the qualifications for the Director from three years of practical personnel management experience to five years of professional experience and allowing the Personnel Board to establish other qualifications.

- Requiring statewide public participation if a hearing on proposed changes to the Personnel Rules is requested.

- Calling for the Personnel Board Chair to select three members to serve on the Public Employees Retirement Board. Currently, the entire board and two members elected by participants in the system comprise the board. This amendment provides for continued balance on the Public Employees Retirement Board.

SB 135 calls for an effective date of January 1, 1992.

Your consideration of my request is appreciated.

SB 135 SECTIONAL ANALYSIS

Section 1

This is a housekeeping change to correspond with a numbering change in Section 13.

Section 2

Amends AS 39.25.040 by changing the appointing authority for the Director, Division of Personnel from the Commissioner of Administration to the Personnel Board.

It also changes the qualifications for the Director by requiring five years of professional personnel management experience rather than three years of practical personnel management experience. This section also permits the Personnel Board to establish additional qualifications.

Section 3

Amends AS 39.25.060(a) by increasing the membership of the Personnel Board from three to five. New language designates seats as management, labor, public, minority groups, and rural areas of the state. Board members are required to support merit principles of employment and possess a demonstrated interest in public administration.

Section 4

Amends AS 39.25.060(b) by specifying that not more than three members of the Personnel Board may be members of the same political party. This amendment is necessary to reflect increased board membership proposed by this legislation.

Section 5

Two amendments are made to AS 39.25.070 in this section to reflect increased board membership. Paragraph four requires three members to constitute a quorum and three affirmative votes for final action on matters coming before the board.

Section 6

Amends AS 39.25.130(a) by changing the authority for recommendations on the extension of the partially exempt service to the classified service from the Commissioner of Administration to the Director, Division of Personnel

Section 7

Amends AS 39.25.130(c) by changing the authority for recommendations on the extension of the classified service to the partially exempt service from the Commissioner of Administration to the Director, Division of Personnel

Section 8

Amends AS 39.25.140(a) by requiring the Director to submit amendments to the Personnel Rules to the Personnel Board rather than the Commissioner of Administration.

Section 9

This section amends AS 39.25.140(g) and requires the Personnel Board to conduct public hearings if requested on proposed amendments to the Personnel Rules. The amendment allows participation in person, by telephone, or teleconference.

Section 10

Amends AS 39.25.150(1) and removes the power of the Commissioner of Administration relating to the position classification plan. The other change in this section is a technical amendment.

Section 11

Amends AS 39.153(d) and gives the Director, Division of Personnel rather than the Commissioner of Administration the responsibility of approving position classifications by the departments named in AS 39.25.153(b).

Section 12

Amends AS 39.35.030(b) by addressing membership on the Public Employees Retirement System Board. It provides for selection of three Personnel Board members by the board chair to serve on the PERS board.

Section 13

Amends AS 44.21.020 to clarify in item eight that administration of a statewide personnel program is "directed by the personnel board." Other housekeeping changes renumber listed duties.

Section 14

Sets the initial terms of the two additional members of the Personnel Board.

Section 15

Eliminates the review of amendments of Personnel Rules by the Commissioner of Administration by repealing AS 39.25.140(b).

Section 16

Provides for an effective date of January 1, 1992

**STATE PERSONNEL OFFICE:
ROLES AND FUNCTIONS**

by

THE NATIONAL ASSOCIATION OF STATE PERSONNEL EXECUTIVES

and

THE COUNCIL OF STATE GOVERNMENTS



CHAPTER 1

THE OFFICE OF STATE PERSONNEL EXECUTIVE: SELECTION, PLACEMENT, RESPONSIBILITIES, AND QUALIFICATIONS

The office of the state personnel executive varies as to method of selection, placement in state government and primary responsibilities. Table 1 contains information on state personnel executives and lists primary responsibilities of their offices. Table 2 lists the salary of each state personnel executive during the 1986 fiscal year, the minimum qualifications for the offices and the proper names of the agencies.

The State Personnel Executive

Thirty-five state personnel executives are appointed by their governors. Three of those states also require either a competitive exam (West Virginia) or certification by a personnel board (Missouri and Washington).

The personnel executive is appointed by a personnel board in five states. Six states report that the personnel executive is appointed by the head of their jurisdictional agency. In North Dakota, that appointment is made from a list of candidates selected by the personnel board. In Arkansas, the individual is selected by the department of administration director. In Massachusetts, the appointment is made from a list of candidates selected by the civil service commission. The remaining states report a variety of selection procedures.

Although not represented in the table, five states appoint personnel executives for four-year or five-year terms:

Hawaii - the executive is appointed for four years at the beginning of each governor's term.

Massachusetts, Missouri and New Hampshire - the executive serves a four year term, with possibility of re-appointment.

New Jersey - the executive may serve for five years.

Table 2 indicates the annual salary, required qualifications and agency name for each personnel executive. The highest annual salary is found in the California Department of Personnel Administration, where at this writing, the salary is set at \$78,209. The lowest salary was reported in North Dakota, where the salary range starts at \$32,052 for the director of the Central Personnel Division of the Office of Management and Budget. The 49 states and one territory responding to this question collectively spend \$2,813,976 in salaries to chief executives of personnel management systems, making the average salary \$56,279.52. (The lowest salary was used for those states providing a range. Texas is not represented in these figures). In addition, Table 2 indicates the length of service of the current personnel executives. Thirty-six personnel executives have served less than five (5) years. The average length of service is four (4) years.

**TABLE 1
THE OFFICE OF STATE PERSONNEL EXECUTIVE:
SELECTION, PLACEMENT AND RESPONSIBILITIES**

State or Jurisdiction	Method of Selection	Reports to Governor	Reports to Personnel Board	Directs Departmental Employees	Administers Positions of Personnel Board	Administers Merit Tests, Establishes Qualifications for Classified Employees	Maintains Roster of State Employees, Classification & Compensation Plans	Makes Budget Recommendations to Legislature	Other
Alabama	B	*	*	*	*	*	*	*	*
Alaska	G	*	*	*	*	*	*	*	*
Arizona	D	*	*	*	*	*	*	*	*
Arkansas	D(a)	*	*	*	*	*	*	*	*
California	SPB UPA	B G	*	*	*	*	*	*	*
Colorado	G	*	*	*	*	*	*	*	*
Connecticut	D	D	*	*	*	*	*	*	*
Delaware	G(b)	*	*	*	*	*	*	*	*
Florida	G	*	*	*	*	*	*	*	*
Georgia	G	*	*	*	*	*	*	*	*
Idaho	G	*	*	*	*	*	*	*	*
Illinois	B	*	*	*	*	*	*	*	*
Indiana	D	*	*	*	*	*	*	*	*
Iowa	G	*	*	*	*	*	*	*	*
Kansas	G	*	*	*	*	*	*	*	*
Kentucky	G(c)	*	*	*	*	*	*	*	*
Louisiana	(d)	*	*	*	*	*	*	*	*
Maine	G	*	*	*	*	*	*	*	*
Maryland	G	*	*	*	*	*	*	*	*
Massachusetts	(e)	*	*	*	*	*	*	*	*
Michigan	B	*	*	*	*	*	*	*	*
Minnesota	G	*	*	*	*	*	*	*	*
Mississippi	B	*	*	*	*	*	*	*	*
Missouri	G(f)	*	*	*	*	*	*	*	*
Montana	(g)	*	*	*	*	*	*	*	*
Nebraska	G	*	*	*	*	*	*	*	*
Nevada	G	*	*	*	*	*	*	*	*
New Hampshire	D	*	*	*	*	*	*	*	*
New Jersey	G	*	*	*	*	*	*	*	*
New Mexico	G	*	*	*	*	*	*	*	*
New York	G	*	*	*	*	*	*	*	*
North Carolina	G	*	*	*	*	*	*	*	*
North Dakota	O(h)	*	*	*	*	*	*	*	*
Ohio	G	*	*	*	*	*	*	*	*
Oklahoma	G	*	*	*	*	*	*	*	*
Oregon	D	*	*	*	*	*	*	*	*
Pennsylvania	CSC BP	(i) C	*	*	*	*	*	*	*
Rhode Island	D	*	*	*	*	*	*	*	*
South Carolina	(j)	*	(j)	*	(j)	*	*	*	*
South Dakota	G	*	*	*	*	*	*	*	*
Tennessee	G	*	*	*	*	*	*	*	*
Texas					(k)				
Utah	G	*	*	*	*	*	*	*	*
Vermont	G	*	*	*	*	*	*	*	*
Virginia	G	*	*	*	*	*	*	*	*
Washington	G(l)	*	*	*	*	*	*	*	*
West Virginia	G(m)	*	*	*	*	*	*	*	*
Wisconsin	G	*	*	*	*	*	*	*	*
Wyoming	G	*	*	*	*	*	*	*	*
Puerto Rico	G				(n)				
TOTALS	D(B),C(11),B(5)	39	15	50	27	50	51	42	10

SOURCE: Information derived from survey of state personnel offices conducted by The Council of State Governments for the National Association of State Personnel Executives (NASPE).

KEY:
B Appointment by personnel board
D Appointment by department head
G Appointment by governor

FOOTNOTES:

- (a) Selected by state administration director, confirmed by the governor.
- (b) Reports to the governor and serves as executive secretary to the board, does not report to the board.
- (c) The commissioner serves as an adviser to the board and reports to the governor and the board by Oct. 1 each year.
- (d) Appointed by the Louisiana Civil Service Commission following a competitive examination.
- (e) Massachusetts' Civil Service Commission submits three names to the secretary of administration and finance, who appoints the personnel administrator with the governor's consent. The personnel administrator serves a four-year term.
- (f) From candidates certified by the Personnel Advisory Board.
- (g) Selected through procedures specified in the Montana recruitment and selection rules.
- (h) Director of Office of Management and Budget makes final choice from among candidates presented by the State Personnel Board.
- (i) Selected by competitive examination.
- (j) Selected by and reports to State Budget and Control Board, a five member board chaired by the governor.
- (k) Decentralized personnel system.
- (l) From three candidates recommended by the Personnel Board.
- (m) From list of eligible candidates following competitive examination.
- (n) Information not available.

(+) Other responsibilities specified.

Alabama - Appointed by employees of Personnel Board, removed for cause; secretary to Board.

Arizona - Administers personnel rules and policies.

California - (State Personnel Board). Oversees all aspects of merit employment; (Department of Personnel Administration) - Represents governor in bargaining with employee representatives; administers training, performance evaluation, benefit, labor relations and staff reduction programs.

Connecticut - Supervises affirmative action activities; conducts collective bargaining negotiations and labor management programs; administers management relations and personnel development programs, job analysis and evaluation, workers' compensation.

Delaware - Administers affirmative action programs; development and training; coordinates labor relations for the executive branch.

Florida - Represents governor in collective bargaining negotiations; supports state agency employee training programs; administers group insurance, retirement benefit programs.

Georgia - Administers health insurance plan, deferred compensation plan, flexible benefit plan; coordinates training programs; serves as secretary to Personnel Board; reviews salary payments for compliance with the Personnel Board Rules.

Hawaii - Conducts recruitment and examinations, training and safety programs, classification and compensation review, employee services, labor relations.

Illinois - Negotiates collective bargaining agreements.

Indiana - Administers affirmative action, rules, medical-dental plans for employees, training and continuing education; publishes newsletter; processes applications; performance appraisals; approves payroll; establishes new personnel programs and policies.

Maine - Administers all aspects of employee relations and collective bargaining, workers' compensation program; training and development programs.

Maryland - Administers equal opportunity employment program; adjudicates employee grievances and appeal of disciplinary actions; administers state employee training and development program and health benefits.

Michigan - Administers employee benefits, rules of employment conditions, employee development and assistance, grievance and unfair labor practices charge, technical appeals (including selections and classification issues); regulates collective bargaining system, conducts representation elections for exclusive collective bargaining agents.

Minnesota - Negotiates contracts with 16 bargaining units; represents state in labor disputes.

Missouri - Recommends pay plan revisions for approval by the Board and governor; directs central training function for all state agencies; participates in central labor relations; develops standard performance appraisal system for the state.

Montana - Collective bargaining supervisor; administers health benefits, deferred compensation, training and award programs, affirmative action.

Nebraska - Promulgates system rules and regulations; administers health and life insurance benefits; coordinates labor relations programs.

New York - Oversees agency affirmative action programs under governor's order; administers health insurance programs.

North Dakota - Administers statewide appeal mechanism.

Oregon - Maintains personnel system statewide.

Pennsylvania - (Civil Service Commission) - appoints staff; attends Commission meetings; recommends rules and amendments; investigates impact of Civil Service Act; appoints deputy; makes biennial report. (Bureau of Personnel) - Develops personnel policy for all agencies under governor's jurisdiction; reviews and evaluates personnel programs; develops and administers senior management executive programs; administers training programs; negotiates collective bargaining.

Rhode Island - Principal responsibility is program planning, directing and managing the overall operation of the State's personnel management system and enforcement of the Merit System Law. This office consults with the Governor, Legislature, Labor Relations Office and department officials on personnel policy issues and practices and recommends to the chief executive or legislative body changes in personnel policies and practices. Further, this office responds to the Governor, Legislature, department officials, press and general public on relevant issues.

Tennessee - Administers provisions of Civil Service Act, rules of the Department of Personnel, including employment practices, classification, compensation, job performance planning and evaluation, attendance and leave, affirmative action, appeals and grievance procedures; acts as secretary of Civil Service Commission.

Utah - Establishes rules and regulations.

Vermont - Negotiates collective bargaining agreements; administers employee benefits; handles employee grievances.

TABLE 2
1986 PERSONNEL EXECUTIVES:
SALARY, LENGTH OF SERVICE, QUALIFICATIONS, AGENCY NAME

	Annual Salary	Length of Service	Qualifications	Agency Name
Alabama	\$65,000	5	NR	Personnel Department
Alaska	\$67,500/\$74,472 (a)	3	(d)	Division of Personnel
Arizona	\$65,858	9	NR	Personnel Division
Arkansas	\$44,000	6	(d)	Office of Personnel Management
California	\$78,209 (DPA)	2	NR	Department of Personnel Administration (DPA)
	\$68,460 (SPB)	2	(d)	State Personnel Board (SPB)
Colorado	\$64,525	4	(d)	Department of Personnel
Connecticut	\$54,822/\$67,019 (a)	11	(d)	State Personnel Division
Delaware	\$57,500	1	NR	Office of State Personnel
Florida	\$58,500	1	NR	Department of Administration
Georgia	\$64,000	8	NR	Personnel Administration
Hawaii	\$50,450	3	NR	Department of Personnel Services
Idaho	\$52,187	2	NR	Personnel Commission
Illinois	\$38,364/\$59,292 (a)	5	(d)	Bureau of Personnel
Indiana	\$62,000	5	(d)	Department of Personnel
Iowa	\$46,000	1	(d)	Department of Personnel
Kansas	\$54,720	1	NR	Division of Personnel Services
Kentucky	\$54,624	2	(d)	Department of Personnel
Louisiana	\$50,760	3	(d)	Department of Civil Service
Maine	\$53,000	5	NR	Department of Personnel
Maryland	\$66,500	1	NR	Department of Personnel
Massachusetts	\$73,156	3	NR	Department of Personnel Administration
Michigan	\$73,800	4	(d)	Department of Civil Service
Minnesota	\$59,774	3	NR	Department of Employee Relations
Mississippi	\$44,280	2	(d)	State Personnel Board
Missouri	\$44,450	13	(d)	Division of Personnel
Montana	\$32,900/\$47,638 (a)	1	(d)	Personnel Division
Nebraska	\$39,314	1	(d)	Department of Personnel
Nevada	\$48,844/\$47,730 (a)(b)	1	(d)	Department of Personnel
New Hampshire	\$38,918/\$50,143 (a)	2	NR	Department of Personnel
New Jersey	\$70,000	5	NR	Department of Civil Service
New Mexico	\$45,000	2	NR	Personnel Office
New York	\$75,445	3	NR	Department of Civil Service
North Carolina	\$61,040(a)	1	NR	Office of State Personnel
North Dakota	\$32,052/\$47,712 (a)	1	(d)	Office of Management & Budget
Ohio	\$47,000	1	NR	Personnel Division
Oklahoma	\$50,000	5	NR	Office of Personnel Management
Oregon	\$50,304	1	NR	Division of Personnel
Pennsylvania	\$51,893 (CSC)	9	(d)	Civil Service Commission (CSC)
	\$54,900 (BP)	11	(d)	Bureau of Personnel (BP)
Rhode Island	\$52,000	10	(d)	Office of Personnel Administration
South Carolina	\$61,450	2	NR	Division Human Resource Management
South Dakota	\$43,000	2	(d)	Bureau of Personnel
Tennessee	\$53,000	.5	NR	Department of Personnel
Texas	Personnel System is Decentralized			
Utah	\$48,000	1	(d)	Division of Personnel Management
Vermont	\$42,577.60	2	NR	Department of Personnel
Virginia	\$61,480	2	NR	Department of Personnel Training
Washington	\$64,000	19	(d)	Department of Personnel
West Virginia	\$36,500	1	(d)	Civil Service System
Wisconsin	\$59,440 (c)	3	NR	Department of Employee Relations
Wyoming	\$58,135	12	(d)	Personnel Division
Puerto Rico	\$39,500	1	NR	Central Office of Personnel Admin.

SOURCE: Information derived from survey of state personnel offices conducted by The Council of State Governments for the National Association of State Personnel Executives (NASPE).

- (a) Formal qualifications or provisions.
- (b) Nevada salary depends upon retirement plan selected.
- (c) Wisconsin's Administrator of Merit Recruitment is paid \$46,500.
- (d) Other requirements specified below.

KEY: NR-No legal requirements for the position of personnel director.

FOOTNOTES:

Alaska - Three years of practical work experience in the field of personnel administration are required.

Arkansas - A bachelor's degree and six years experience are required.

California (SPB) - The State Personnel Board requires permanent civil service status and an extensive managerial and program administrative experience.

Colorado - Experience can substitute for education and or education for experience.

Connecticut - General Statutes provide that the Director of Personnel and Labor Relations/Deputy Commissioner in the Department of Administrative Services should be appointed on the basis of ability in the field of personnel administration.

Illinois - A master's degree is required as well as three years of managerial experience. Experience can be substituted for education.

Indiana - Experience can be substituted for education.

Iowa - Experience can be substituted for education.

Kentucky - A bachelor's degree and five years experience are required. Experience can be substituted for education and vice-versa.

Louisiana - Two years of professional experience in personnel at least equivalent to that of an assistant division chief is required.

Michigan - A bachelor's degree and 10 years experience required, the latter depending upon level of experience. Experience can be substituted for education.

Mississippi - A master's degree and five years of experience are required.

Missouri - A bachelor's degree and six years of experience, four at managerial level, are required.

Montana - A bachelor's degree and five years experience are required. Experience can be substituted for education and vice-versa.

Nebraska - A bachelor's degree and five years experience are required.

Nevada - A bachelor's degree is required. Education can be substituted for experience. Experience requirement determined by the Personnel Commission.

North Dakota - A bachelor's degree and five years experience are required. Education can be substituted for experience and vice-versa.

Pennsylvania (CSC) - A master's degree is required. Experience can substitute for education and vice-versa. Eight years experience, including five years in directing and managing a major personnel function are required.

Pennsylvania (BP) - A bachelor's degree and seven years experience are required. Experience can substitute for education and vice-versa.

Rhode Island - A bachelor's degree and five years experience are required.

South Dakota - Two years personnel experience is required.

Utah - A master's degree and eight years experience are required. Education can substitute for experience and vice-versa.

Washington - Must have had personnel management experience.

West Virginia - A bachelor's degree is required.

Wyoming - Five years experience is required.