

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10014 HOUSE STATE AFFAIRS

National Right to Work Legal Defense Foundation, Inc.

The Right to Work Principle: Frequently-Asked Questions

What is the Right to Work principle?

The Right to Work principle--the guiding concept of the National Right to Work Legal Defense Foundation--affirms the right of every American to work for a living without being compelled to belong to a union. Compulsory unionism in any form--"union," "closed," or "agency" shop--is a contradiction of the Right to Work principle and the fundamental human right that the principle represents. The National Right to Work Committee advocates that every individual must have the right, but must not be compelled, to join a labor union. The National Right to Work Legal Defense Foundation assists employees who are victimized because of their assertion of that principle.

How does the National Right to Work Legal Defense Foundation differ from the National Right to Work Committee?

The National Right to Work Legal Defense Foundation and the National Right to Work Committee are separate and distinct organizations, however, their work is complementary.

The Foundation works solely through the courts to assist employees whose human or civil rights have been violated by abuses of compulsory unionism.

The Committee, founded in 1955, lobbies the Congress and state legislatures for the elimination of all forms of forced unionism. It also conducts a nationwide educational program on the Right to Work principle.

What is a Right to Work law?

A Right to Work law guarantees that no person can be compelled, as a condition of employment, to join or not to join, nor to pay dues to a labor union. Section 14(b) of the Taft-Hartley Act affirms the right of states to enact Right to Work laws. The 21 states which have passed Right to Work laws are:

Alabama, Arizona, Arkansas, Kansas, Florida, Georgia, Idaho, Iowa, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming.

Is Right to Work "anti-union"?

The National Right to Work Legal Defense Foundation is neither "anti-union" nor "pro-union." The focus is on individual freedom. The Foundation affirms the right of all

Americans to be free of compulsory unionism abuses.

How does compulsory unionism affect government policy?

Compulsory unionism is primarily responsible for the Tax-and-Spend policies of the U.S. Congress. Under their federally-granted coercive powers, union officials collect some \$4.5 billion annually in compulsory dues and funnel much of it into unreported campaign operations to elect and control congressional majorities dedicated to higher taxes and increased government spending.

"[U]nions have greatly increased their financial commitment to political activity in recent election cycles ... as a way to achieve in the political process the gains that have eluded them at the bargaining table," economist James T. Bennett wrote in the Winter 1991 issue of the *Journal of Labor Research*. His authoritative study revealed that, despite membership losses, the total income (\$11.5 billion annually) of private sector unions is at an all-time high. Union income, in inflation-adjusted dollars, has more than doubled in the past 30 years.

What is "exclusive representation"?

"Exclusive representation" is the special coercive privilege, given by federal law, that empowers union officials to represent all employees in a company's bargaining unit. This "compulsory union representation" deprives employees, even in Right to Work states, of their right to bargain for themselves. Union officials demand this power, then use it as their excuse to force employees to pay dues for representation they do not want.

What rights do employees in non-Right to Work states have?

Certain rights of employees not covered by a state Right to Work law have been established by U.S. Supreme Court rulings. Employees can choose whether or not to join a union and union members may resign their union membership. Nonmembers can only be required to pay for their proportionate part of the union's proven bargaining costs. They may not be compelled to pay any fees until the costs have been stated and explained and can challenge the costs as provided by the union. Employees whose sincere religious beliefs prevent them from joining or paying any money to the union also have special rights.

What effect does a Right to Work law have on a state's standard of living?

The National Right to Work Committee has called attention to the fact that Right to Work states enjoy a higher standard of living than do non-Right to Work states. Families in Right to Work states, on average, have greater after-tax income and purchasing power than do those families living in non-Right to Work states, independent studies reveal. What's more, Right to Work states have greater economic vitality, official Department of Labor statistics show, with faster growth in manufacturing and nonagricultural jobs, lower unemployment rates and fewer work stoppages.



Testimony by Heidi Kelley for House Bill 309

My name is Heidi Kelley. I am a lifelong registered Democrat. I have been in the work force for the last 26 years, serving the last 12 years as both an Administrative Manager and as a Human Resources professional. My professional and community involvement includes membership in the Anchorage Society of Human Resource Management, where I currently serve on the Board as the Community Service Chair and also actively participate in the Alaska Grassroots program. I am currently employed as a Human Resources Representative at Matanuska Electric Association in Palmer, Alaska.

I am here today to present my individual viewpoint regarding proposed House Bill 309, a Right to Work bill. I base my viewpoint upon what I have seen first hand in my significant experience as a recruiter and interviewer. I see House Bill 309 as supporting the rights of individuals to maintain their freedom of choice. Current law does not provide for that freedom of choice. I frequently hear comments from employees about how unfair it is to force a certain person to "have to belong" to a union.

While the original intent of our current laws was to prohibit management coercion against employees desiring to join a union shop, the pendulum has swung the other way, and there is not a system of checks and balances in our system. Union shops are just as much a business as any company in the United States, and laws which promote and continue this imbalance of power in favor of organized labor harm the country as a whole, and create increased costs to the consumer. The United States Constitution guarantees citizens freedom of choice, but Alaska State Labor laws regarding union shops do not support these individual rights.

House Bill 309 does not take away the rights of employees to organize or to seek agency representation, and I would not support an act to do so. My role as a Human Resources professional is two fold: I represent management policies for any company with which I am employed, but I also am responsible for assuring that employees are treated fairly and in accordance with State and Federal regulations. Passing House Bill 309 shows that you as a representative of Alaska care about the individual rights of employees throughout the state. I ask that you pass House Bill 309 to promote the best interests of your constituency.



Alaska State Legislature

Please enter into the record my testimony to the STIA
 committee name
 committee on House Bill 309, dated March 2, 2000
 bill/subject

2- Pages

LORETTA

Signed: Heidi Keelley
 Testifier
Self
 Representing (Optional)
1904 2 Cherni Circle Eagle River AK 99577
 Address
(907) 696-5141
 Phone No.

Testimony by Heidi Kelley for House Bill 309

My name is Heidi Kelley. I am a lifelong registered Democrat. I have been in the work force for the last 26 years, serving the last 12 years as both an Administrative Manager and as a Human Resources professional. My professional and community involvement includes membership in the Anchorage Society of Human Resource Management, where I currently serve on the Board as the Community Service Chair and also actively participate in the Alaska Grassroots program. I am currently employed as a Human Resources Representative at Matanuska Electric Association in Palmer, Alaska.

I am here today to present my individual viewpoint regarding proposed House Bill 309, a Right to Work bill. I base my viewpoint upon what I have seen first hand in my significant experience as a recruiter and interviewer, I see House Bill 309 as supporting the rights of individuals to maintain their freedom of choice. Current law does not provide for that freedom of choice. I frequently hear comments from employees about how unfair it is to force a certain person to "have to belong" to a union.

While the original intent of our current laws was to prohibit management coercion against employees desiring to join a union shop, the pendulum has swung the other way, and there is not a system of checks and balances in our system. Union shops are just as much a business as any company in the United States, and laws which promote and continue this imbalance of power in favor of organized labor harm the country as a whole, and create increased costs to the consumer. The United States Constitution guarantees citizens freedom of choice, but Alaska State Labor laws regarding union shops do not support these individual rights.

House Bill 309 does not take away the rights of employees to organize or to seek agency representation, and I would not support an act to do so. My role as a Human Resources professional is two fold: I represent management policies for any company with which I am employed, but I also am responsible for assuring that employees are treated fairly and in accordance with State and Federal regulations. Passing House Bill 309 shows that you as a representative of Alaska care about the individual rights of employees throughout the state. I ask that you pass House Bill 309 to promote the best interests of your constituency.

RECEIVED BY

MAR 15 2000

Rep. Jeannette James



Alaska State Legislature

Please enter into the record my testimony to the ★ STA
 committee name
 committee on House Bill 309, dated March 2, 2000
 bill/subject

J. Pages

Signed: Heidi Keelley
 Testifier
Self
 Representing (Optional)
1904 2 Cherni Circle Eagle River AK 99577
 Address
(907) 696-5141
 Phone No.

HB

315

TONY KNOWLES
GOVERNOR

P.O. Box 11600
Juneau, Alaska 99811-0160
(907) 465-1500
Fax (907) 465-1501

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 21, 2000

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

The state has made great effort and had much success in taking advantage of today's electronic medium. As part of our ongoing work to keep Alaska in step with the Internet age, this bill I transmit today eliminates the need for the hard copy publishing of the Alaska Administrative Journal and replaces it with the new Alaska Online Public Notice System.

The Alaska Administrative Journal (journal) is a weekly public notice publication of the lieutenant governor's office. It has been available in print by subscription as well as on the Internet. With the increased efficiency and accessibility of the Internet by government agencies and the public, continuing to provide the journal in printed form by weekly subscription is neither time nor cost effective. At this time, there are only 12 subscribers to the journal, a drop from about 125 in 1995. Only one remaining subscriber, a law firm, is based in Alaska.

The lieutenant governor will supervise use of the Alaska Online Public Notice System (system) and prescribe the form for agencies to post required notices on the system. There is no change as to which notices are required to be posted. However, under this bill, posting of public notices will be done directly by agencies, which means the system will be continually updated. The system has an archiving function that will allow a person to locate a particular public notice and verify that it was posted as required.

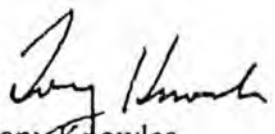
For those who do not have personal computers, the system may be accessed on computers at most libraries and at other state agencies that provide a computer terminal for public use. Additionally, a copy of a public notice that was posted on the system may be obtained from any designated state employee by requesting a printed copy. Finally, the bill does not

The Honorable Brian Porter
January 21, 2000
Page 2

remove existing requirements for publication in other media. State agencies will continue to be required to comply with those requirements relating to printing, posting, and distribution of public notices, such as newspaper notices for solicitations to bid and for meetings covered by the open meetings statutes.

As the result of an Administrative Order, the Alaska Online Public Notice System is already functioning and includes all the information now published in the journal. I urge your prompt and favorable action on this measure.

Sincerely,


Tony Knowles
Governor

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 24, 2000

FURTHER REFERRALS:

Date of Committee Action: 2/3/00

The STATE AFFAIRS Committee considered:

HB 315

HOUSE BILL NO. 315

ONLINE SYSTEM REPLACES AK ADMIN JOURNAL

"An Act relating to elimination of the Alaska Administrative Journal and instituting public notice requirements on the Alaska Online Public Notice System; amending public notice publication requirements for certain regulations; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Jeannette James</i>	✓			
<i>[Signature]</i>	✓			
<i>Bill Hud</i>	✓			
<i>[Signature]</i>	✓			
<i>Scott Dan</i>	✓			
<i>Val Smalley</i>	✓			
<i>Cherittula</i>	✓			

CHAIR'S SIGNATURE *Jeannette James*



FRAN ULMER
LIEUTENANT GOVERNOR
STATE OF ALASKA

January 25, 2000

Representative Jeannette James
Chair, House State Affairs Committee
State Capitol
Juneau, Alaska 99811-1182


Dear Representative James,

I am writing to request that you schedule, at the earliest possible convenience, a hearing for House Bill 315, "An Act relating to elimination of the Alaska Administrative Journal and instituting public notice requirements on the Alaska Online Public Notice System; amending public notice publication requirements for certain regulations; and providing for an effective date."

The bill would eliminate the requirement that we continue to publish the Alaska Administrative Journal and place in statute a requirement that all agencies publish public notices on the new Online Public Notice System. The attached fact sheet fills in some of the details.

If you have any questions about the legislation, please don't hesitate to contact me or John Lindback, my chief of staff. We can be reached at 465-3520.

Sincerely,


Fran Ulmer
Lieutenant Governor

FACT SHEET

*Legislation to eliminate AK Admin Journal/Replace with Online Public Notice
Lt. Gov. Fran Ulmer/Jan. 21, 2000*

- **The Alaska Administrative Journal has served as a compilation of public notices from state agencies, the great majority of which are also required to be published in the print or broadcast media.**
- **Alaska Administrative Journal subscribership has dramatically declined with the advent of state government making information available to the public on the internet. When Lt. Governor Ulmer first took office, there were about 125 paying subscribers. Subscribership has dropped to 9 corporate and legal businesses, all but one out-of-state.**
- **On June 4, 1999, Gov. Knowles signed Administrative Order 183, which requires all state agencies to post statutorily required public notices on the new Online Public Notice system. The system provides the public with a convenient way to find all public notices in one place on the state web page. The Online Public Notice website is organized in a similar format to the Alaska Administrative Journal.**
- **This legislation would eliminate the requirement that the Lt. Governor's Office produce the Alaska Administrative Journal and replace it with a requirement that the Lt. Governor provide oversight of the Online Public Notice system. It requires agencies by statute to post their public notices in the Online Public Notice system.**
- **The legislation has a zero fiscal note. It replaces one responsibility with another.**

TONY KNOWLES
GOVERNOR



P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

ADMINISTRATIVE ORDER NO. 183

FINDINGS

I, Tony Knowles, Governor of the State of Alaska, make the following findings:

1. One of the goals of my Administration has been to make more information about state government available to Alaskans and to use less paper in accomplishing that goal.
2. Alaskans' use of on-line services has increased so substantially in recent years that a new national study reports that Alaska leads the nation in rate of Internet use.
3. Making notices of meetings or actions of state government available on the Internet will assist Alaskans in understanding what their government is doing and increase their ability to participate in their government.

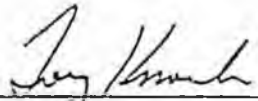
ORDER

Under the authority of art. III, secs. 1 and 24 of the Alaska Constitution, I, Tony Knowles, Governor of the State of Alaska, hereby order the following:

1. No later than July 1, 1999, all departments and other agencies of the executive branch must post on the State of Alaska's Online Public Notice website all new legal notices, notices of public meetings, notices of proposed actions, and other public notices required by statute or regulation.
2. The commissioner of each department of the executive branch must designate one employee to be responsible for posting all public notices of that department and its affiliated agencies on the Online Public Notice website. Each department must provide the name of the designated employee to the Office of the Lieutenant Governor no later than June 10, 1999. If a department's designated employee becomes unable to fulfill these responsibilities for any reason, the department must designate another employee and provide the name of the new designee to the Office of the Lieutenant Governor.

This Order takes effect immediately.

Dated this 4 day of June, 1999.



Tony Knowles
Governor

HB 315 FACT SHEET

*Legislation to eliminate AK Admin Journal/Replace with Online Public Notice
Lt. Gov. Fran Ulmer/Jan. 31, 2000*

- **The Alaska Administrative Journal has served as a compilation of public notices from state agencies**, the great majority of which are also required to be published in the print or broadcast media.
- **Alaska Administrative Journal subscribership has dramatically declined** with the advent of state government making information available to the public on the internet. When Lt. Governor Ulmer first took office, there were about 125 paying subscribers (\$90 a year). Subscribership has dropped to 9 out-of-state businesses. They are: PHICO Ins. Co, RIA Group, Mills Publishing Co., Bureau of National Affairs, West Group, University of Iowa, American Council of Life Insurance, Allstate Insurance Company and CCH Inc.
- **On June 4, 1999, Gov. Knowles signed Administrative Order 183**, which requires all state agencies to post statutorily required public notices on the new Online Public Notice system. The system provides the public with a convenient way to find all public notices in one place on the state web page. The Online Public Notice website is organized in a similar format to the Alaska Administrative Journal.
- **This legislation would eliminate the requirement that the Lt. Governor's Office produce the Alaska Administrative Journal and replace it with a requirement that the Lt. Governor provide oversight of the Online Public Notice system.** It requires agencies by statute to post their public notices in the Online Public Notice system.
- **The legislation has a zero fiscal note.** It replaces one responsibility with another.

Sectional Analysis
HB 315

Replacing Alaska Administrative Journal (AAJ) with Online Public Notice System
Office of the Lt. Governor/January 28, 2000

Section 1

Replaces requirement in the state procurement code that invitations to bid be published in the AAJ with a requirement that they be published on the Alaska Online Public Notice System.

Section 2

Replaces requirement that certain advisory opinions of the attorney general be published in the AAJ with a requirement that they be published on the Alaska Online Public Notice System.

Section 3

Repeals the AAJ section in the Administrative Procedures Act and replaces it with provisions that public notices be published on the Online Public Notice System.

All notices now required to be published in the AAJ will be required to be published online. Those notices include:

- a.) Adoption, amendment or repeal of regulations.
- b.) State agency meetings that must be publicly noticed.
- c.) Invitations to bid required to be noticed under provisions of the state procurement code.
- d.) Notices of state RFPs issued under statutes related to housing and urban renewal, state procurement code, grants to named recipients, public land and the motor fuel tax.
- e.) Executive orders and administrative orders issued by the Governor.
- f.) Written delegations of authority made by the Governor and commissioners of state departments.
- g.) Text or summary of the text of regulations that are noticed under the Administrative Procedures Act.
- h.) Notices required under the Administrative Procures Act related to documents and materials incorporated by reference in a regulation.
- i.) Summaries of the text of recently issued formal opinions and advice memos from the attorney general and the entire text of certain opinions.
- j.) Vacancies on boards and commissions whose members are appointed by the Governor.

This section specifies that the Lieutenant Governor supervise the system and establish the form for notices. It also requires the Lieutenant Governor ensure that a permanent.

public, electronic archive of notices published on the system be made available to the public.

Section 4

Amends the portion of the Administrative Procedures Act dealing with adoption and/or changes of regulations to delete the AAJ and insert the Online Public Notice System.

Section 5

Amends section of the Administrative Procedures Act dealing with contents of notices to delete reference to the AAJ and insert reference to the Online Public Notice System.

Section 6

Amends section of the Administrative Procedures Act relating to material incorporated by reference into regulations to delete requirement for notice in the Administrative Journal and insert requirement for publishing on the Online Public Notice System.

Section 7

Amends section of Administrative Procedure Act dealing with public meetings to delete reference to publication in the AAJ and insert reference to publication on the Online Public Notice System.

Section 8

Instructs reviser to delete all references in the Alaska Administrative Code to the Alaska Administration Journal and replace it with Alaska Online Public Notice System.

Section 9

Immediate effective date.

Bill History/Action Display

BILL: HB 315 SHORT TITLE: ONLINE SYSTEM REPLACES AK ADMIN JOURNAL
 BILL VERSION:
 SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

CURRENT STATUS: (H) STA STATUS DATE: 1/24/00

TITLE: "An Act relating to elimination of the Alaska Administrative Journal and instituting public notice requirements on the Alaska Online Public Notice System; amending public notice publication requirements for certain regulations; and providing for an effective date."

Full Text Bill/Resolution has Zero Fiscal Note(s).

Committee Action With Bill History

Jrn-Date	Jrn-Page	Action
1/24/00	<u>1988</u>	(H) READ THE FIRST TIME - REFERRALS
1/24/00	<u>1988</u>	(H) STA
1/24/00	<u>1988</u>	(H) ZERO FISCAL NOTE (GOV)
1/24/00	<u>1988</u>	(H) GOVERNOR'S TRANSMITTAL LETTER
1/24/00	<u>1988</u>	(H) REFERRED TO STATE AFFAIRS

Similar Subject Match or Exact Subject Match

ADMINISTRATIVE PROCEDURE

EXECUTIVE BRANCH

PROCUREMENTS

PUBLICATIONS

REGULATIONS

REGULATORY ACTIONS

Bill Root:

[Return to BASIS Main Menu\(21st Legislature\)](#)

Information in BASIS is in Real Time.

Please use your 'Reload' button to update this page.

FISCAL NOTE

Bill Version: HB 315
 (H) Publish Date: 1/24/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Office of the Governor
 Title "An Act relating to ... Alaska Online Public BRU Executive Operations
Notice System..." Component Lieutenant Governor
 Sponsor Rules Committee
 Requester Governor Component No. 11

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Office of the Lt. Governor proposes a zero-fiscal note because this legislation eliminates one responsibility, production of the administrative journal, and replaces it with another, oversight of the Online Public Notice system. The new responsibility requires a similar workload and responsibility to the old one. Hence, it is unnecessary to request any new general funds.

Prepared by: John Lindback, Chief of Staff Phone 465-3520
 Division Office of the Lt. Governor Date/Time 12/28/99 2:37 PM
 Approved by: [Signature] Date 12/14/1999
 Agency Office of the Lt. Governor

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

HB

317

TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

PO Box 11000
Juneau, Alaska 99811-1000
(907) 465-3500
Fax (907) 465-3532
www.gov.state.ak.us

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 21, 2000

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

Workplace Alaska, the state's new, highly successful system for hiring, has won national awards for outstanding innovation. It is time to put this pilot program into state law.

This bill I transmit today amends various sections of the State Personnel Act to integrate Workplace Alaska as an on-line recruitment, application, and hiring process for positions in the classified service.

Workplace Alaska replaces the time-consuming old system of eligibility lists and examinations, which could cause a single hire to take as much as several months to complete. Under this new program, an applicant maintains a single resume on-line that can be used for any vacancy advertised.

The new hiring process follows these steps:

- Hiring manager completes an on-line vacancy announcement;
- Agency reviews and approves the job announcement;
- Division of Personnel posts the announcement on the Internet;
- Job seekers complete a one-time applicant profile (resume);
- Job seekers access job postings over the Internet and view individual vacancies;
- Job seekers file a job qualification summary form for each vacancy of interest, attaching the applicant profile;
- Hiring manager reviews all submitted job qualification summaries and profiles, conducts interviews, reference checks, and selects an individual for the position;
- Agency approves the appointment.

HB 317

The Honorable Brian Porter

January 21, 2000

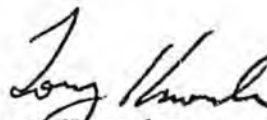
Page 2

Workplace Alaska is an advantage to hiring managers as well as to applicants. It results in faster hires, a better-qualified pool of candidates who are interested in specific vacancies, and up-to-date applicant and vacancy information.

The bill establishes a system to continue honoring preference for veterans, prisoners of war and members of the Alaska National Guard. It also provides authority for the personnel board to adopt necessary implementing regulation changes.

Workplace Alaska has proven to be a vast improvement in the state's hiring process. I urge your prompt and favorable action on this measure.

Sincerely,



Tony Knowles
Governor

AMENDMENT #1

Passed

OFFERED IN THE HOUSE
TO: CSHB 317(MLV)

- 1 Page 5, following line 12:
- 2 Insert new bill sections to read:
- 3 ** Sec. 5. AS 39.25.155(c) is amended to read:
- 4 (c) Applicants shall be placed on [ELIGIBLE] lists for the vocational
- 5 classification indicated in their applications [SUBMITTED TO THE DIVISION OF
- 6 PERSONNEL IN THE ORDER OF THEIR RELATIVE RANKING] based on an
- 7 assessment of their vocational [TECHNICAL] ability and [,] place of residence
- 8 [AND WITHOUT WRITTEN EXAMINATION. APTITUDE OR OCCUPATIONAL
- 9 TESTS MAY BE GIVEN IF A POSITION REQUIRES A SPECIFIC ABILITY].
- 10 * Sec. 6. AS 39.25.155(e) is amended to read:
- 11 (e) The director of personnel shall embody a concept combined of vocational
- 12 [TECHNICAL] ability, place of residence, local hire, and area unemployment in the
- 13 personnel rules to accomplish the intent of this section."

- 14 Renumber the following bill sections accordingly.

- 15 Page 9, line 26:
- 16 Delete "secs. 1 - 14"
- 17 Insert "secs. 1 - 16"

- 18 Page 9, line 27:
- 19 Delete "Section 15"
- 20 Insert "Section 17"

HB 317

Recruitment and selection of employees is one of the basic purposes of a personnel function. To do so quickly and effectively is ideal. In the past, recruiting and selecting Alaska's public workforce was a labor and paper-intensive process that produced lists of applicants who may or may not have been interested in any particular vacancy. Windows of eligibility and lengthy waits between application and eligibility points seriously hampered managers' abilities to respond to workforce demands such as turnover, difficulties in recruitment and technological innovations.

WorkPlace Alaska changed that scenario. Developed in response to requests for speedier review of their applications and to speedier list of applicants, job seekers and hiring managers have both responded positively to WorkPlace Alaska.

An available vacancy is posted almost immediately on the WorkPlace Alaska web site. Job seekers complete an electronic resume only once, then attach it to the vacancy announcement to apply.

WorkPlace Alaska is available 24 hours per day, seven days per week, 52 weeks per year, except for an hour or two per week for scheduled maintenance. What took months to complete can now be accomplished in minutes.

Testing on the WorkPlace Alaska system began in March 1997 as a two-department pilot project. In November 1998 it was expanded for use by all state agencies. As the pilots and expanded use provided more feedback and refinements were made, WorkPlace Alaska has replaced the paper-intensive register system completely.

The legislation before you is intended to refresh the language of the law to reflect the use of WorkPlace Alaska instead of the register system. Terms like "examination" and "assessment" are used frequently in this presentation. We are asking to replace "examination" with "assessment" to better reflect the actual practices used in recruitment and selection.

Madame Chair, I offer a brief synopsis of the changes or I can provide a detailed walk-through of the sections of the law that are proposed for change, depending on the desire of the committee.

Chart of Statutory Revisions to Implement Workplace Alaska – 2/29/00

Section, page, line	Current Statute	Proposed Revision	Reason or Necessity
Section 1 Page 1 Line 8	AS 39.25.080(a) State personnel records, including employment applications and examination materials, are confidential and are not open to public inspection except as provided in this section.	Add the words “and other assessment” between “examination” and materials;”	There is an assessment with WPA, not an examination; reference is corrected for practice.
Section 2 Page 1 Line 12	AS 39.25.120(b) A person holding a position in the partially exempt service is not required to take an examination or qualify or earn a place on a register, and is not eligible for a hearing by the personnel board in case of dismissal, demotion, or suspension. ...	A person holding a position in the partially exempt service is not required to complete an assessment, and is not eligible for a hearing by the personnel board in case of dismissal, demotion, or suspension....	Delete reference to register system; no longer is use.
Section 3 Page 2 Line 12	AS 39.25.130(a)(3) Involves responsibilities and duties of a type not susceptible to the ordinary recruiting and examining procedures.	Change word “examining to “assessment;”	Reflects current practice.
Section 4 Page 3 Lines 4-6	AS 39.25.150(3) the use of employee selection methods, including open competitive examinations, when appropriate, that will fairly test the capacity and fitness of the person examined to	the use of employee selection methods, including open competitive assessment devices , when appropriate, that will fairly evaluate the capacity and fitness of the	Delete reference to examination; Reflects vacancy-based position

	discharge the duties of the class in which employment is sought;	person assessed to discharge the duties of the position in which employment is sought;	orientation of WPA instead of class based register system.
Section 4 Page 3 Lines 7-8	AS 39.25.150(4) the establishment and maintenance of eligible lists for appointment and promotion providing the names of eligible candidates in order of their relative performance in the examinations;	the formulation of a list for appointment or promotion to a position;	Reference to the development of a vacancy-based list of applicants rather than the maintenance of an eligible list or register; requires the adoption of WPA-oriented regulations.
Section 4 Page 3 Line 11	AS 39.25.150(5) the procedure for certifying eligible candidates; the rule adopted under this paragraph may include procedures providing a preference for certifying local residents when appropriate;	the procedure for filling positions; the rule adopted under this paragraph may include procedures providing a preference for local residents when appropriate;	References the requirement for regulation governing the use of WPA for filling vacancies rather than for certifying eligible candidates, and for providing for local resident preferences, when appropriate; removes the reference to "certifying."
Section 4 Page 3 Line 17	AS 39.25.150(6) promotions from within the state service when there are qualified candidates in the state service; vacancies shall be filled by promotion whenever practicable and in the best interest of the state service and promotion shall be by competitive	Change word "examination" to word "assessment;"	Reference to current practice; assessment rather than examination.

	examination whenever possible; in considering promotions, the applicants' qualifications, performance records, seniority, and conduct shall be evaluated;		
Section 4 Page 3 Lines 28-30	AS 39.25.150(9) provisional appointment without competitive examination when appropriate eligible lists are not available;	Provisional appointment without competitive assessment when the recruitment and assessment procedures have not identified qualified candidates in sufficient number;	Corrects reference from examination to assessment, and provides for continuing use of alternative appointment methods when recruitment fails to provide a sufficient pool of candidates.
Section 4 Page 4 Line 18	AS 39.25.150(19) Granting of employment preference rights to...prisoner of war	Adds "former" before "prisoner of war."	
Section 4 Page 4 Line 23-end	AS 39.25.150(21) The granting of employment preference to severely handicapped persons; this includes the right to provisional appointment without competitive examination for period up to four months and the granting of eligibility to a severely handicapped person provisionally appointed under the rules who demonstrates ability to perform the job for permanent appointment without competitive examination; provisional employment under this	Change the word "examination" to "assessment in the two places this term appears; insert the word "of" between "periods" and "up;" change the phrase "severely handicapped person" to "individual with a severe disability" throughout this subsection.	References assessment rather than examination in language; provides for the use of "individual with disability" rather than "handicapped person" in keeping with social consciousness.

	<p>paragraph may not exceed four months during a 12-month period; "severely handicapped" as used in this paragraph means persons certified by the director of the division of vocational rehabilitation to be severely handicapped;</p>		
<p>→→ not repealed</p>	<p>AS 39.25.155(c) Applicants shall be placed on eligible lists for the vocational classification indicated in the applications submitted to the Division of Personnel in the order of their relative ranking based on an assessment of their vocational technical ability, and place of residence, and without written examination. Aptitude or occupational tests may be given if a position requires a specific ability.</p>		<p>There are amendments proposed for this section that focus on moving the concept "examination" to "assessment."</p>

	<p>AS 39.25.155(e) The director of personnel shall embody a concept combined of <u>technical</u> ability, place of residence local hire and area unemployment in the personnel rules to accomplish the intent of this section.</p>	<p>Substitute "vocational" for "technical."</p>	<p>Changes language to reflect the use of vocational ability rather than attempting to determine the meaning of "technical."</p>
--	--	---	--

<p>Section 5 Page 5 Line 14- end</p>	<p>AS 39.25.159(a) Veteran's Preference</p> <p>A veteran or prisoner of war who possesses the necessary qualification for a job classification applied for under this chapter is entitled to a preference under this subsection. In an examination to determine the qualification of applicants for the classified service under merit system examination, five points shall be added to the passing grade of a veteran, 10 points shall be added to the passing grade of a disabled veteran, or 10 points shall be added to the passing grade of a prisoner of war. A person may receive preference points under only one of the categories described in this subsection of in (c) of this section. A person may use the preference without limitation when being considered for a position for which persons who are not currently state employees are being considered. If consideration of applicants is limited to state employees, preference points under this subsection may not be counted. If a position in the classified service is eliminated, employees shall be released in accordance with rules that give due effect to all factors. If all</p>	<p>A veteran or former prisoner of war who possesses the necessary qualifications for a position or job classification applied for under this chapter is entitled to a preference under this subsection. In an assessment using numerical ratings, points equal to five percent of the points available from the assessment device or devices shall be added to the passing score of a veteran, and 10 percent of the points available from the assessment device or devices shall be added to the passing score of a disabled veteran or former POW. In an assessment not using numerical ratings, consideration shall be afforded to a veteran; additionally, an opportunity to interview for the position shall be afforded to a disabled veteran or a former POW. A person may receive preference under only one of the categories described in this subsection or in (c) of this section. ...If the scope of recruitment for a position is limited to state employees, preference under this subsection may</p>	<p>The reference to "former" prisoner of war is more realistic.</p> <p>New language continues changing references from "examination" to "assessment;"</p> <p>Changes requirement to meet practice of considering all veterans for advertised vacancies, and adds a requirement to interview a disabled veteran or former POW;</p> <p>Continues changing references to recruitments;</p> <p>Maintains current layoff practices.</p>
--	---	---	--

	<p>job qualifications are equal, a veteran or prisoner of war shall be given preference over a person who was not a veteran or prisoner of war, and the veteran or prisoner of war shall be kept on the job. This subsection may not be interpreted to amend the terms of a collective bargaining agreement.</p>	<p>not be counted. If a position in the classified service is eliminated, employees shall be released in accordance with rules adopted under AS 39.25.150(13). In the case of a comparison of employees with equal qualifications on the factors adopted under AS 39.25.150(13), a veteran or former POW shall be given preference over a person who was not a veteran or former POW, and the veteran or former POW shall be kept on the job.</p>	<p>If collective bargaining agreements allow it, veterans or former POWs should be given "super seniority," and layed off after non-veterans.</p>
<p>Section 6 Page 6 Line 14-31</p>	<p>AS 39.25.159(c) Similar to veterans and POW preference in AS 39.25.159(a), except applies to a member of the national guard.</p>	<p>Similar revisions to those set out above re: AS 39.25.159(a).</p>	<p>Applies the protections granted in the previous section to members and former members of the National Guard.</p>
<p>Section 7 Page 7 Line 7</p>	<p>AS 39.25.159(d)</p>	<p>Add a new paragraph (4) to read: "consideration" means reviewing a person's entire application in order to determine whether the person should be selected, rejected, or admitted to further steps in the assessment or selection process.</p>	<p>New paragraph that defines the word "consideration" in the context of WPA.</p>

<p>Section 8 Page 7 Line 11</p>	<p>AS 39.25.160(h) A person may not knowingly make a false statement, certificate, mark, rating or report with regard to a test, certification, or appointment made under this chapter or in any manner commit a fraud preventing the impartial execution of this chapter and the personnel rules adopted under this chapter.</p>	<p>A person may not knowingly make a false statement, mark, rating or report with regard to an assessment . . . (remainder unchanged).</p>	<p>Replaces "test" with "assessment";</p>
<p>Section 9 Page 7 Line 16</p>	<p>AS 39.25.160(i) A person may not obstruct the right of another person to examination, eligibility, certification, appointment, or promotion under this chapter.</p>	<p>A person may not obstruct the right of another person to assessment...</p>	<p>Replaces "examination" with "assessment."</p>
<p>Section 10 Page 7 Line 21</p>	<p>AS 39.25.195(b) An appointment to state service, except an emergency appointment, shall be made from an applicable eligible list or dispatching register unless in appropriate circumstances the director has waived this requirement.</p>	<p>An appointment to state service, except an emergency appointment, shall be made from the list of applicants qualified for the position unless in appropriate circumstances the director has waived this requirement.</p>	<p>Dispenses with use of "eligible list" and substitutes "list of applicants qualified..."</p>
<p>Section 11 Page 7 Line 31 to Page 8 Line 3</p>	<p>As 39.25.195(c)(2)-(4) The hiring department or agency has certified that there is an immediate need to fill an authorized permanent position and it is</p>	<p>Change "make certification" to "conduct recruitment;"</p>	<p>References the process for filling a vacancy by nonpermanent appointment; changes</p>

	impractical either to establish the position or to make certification.		reference from "certification" to "recruitment"
Section 12 Page 8 Line 17	<p>AS 39.25.196(a)</p> <p>Notwithstanding the provisions of AS 39.25.195, a hiring department or agency may grant a preference to local residents in the appointment of nonpermanent employees or in the appointment of permanent employees to perform seasonal work assignments of 180 calendar days or less in a 12-month period. If there are no local residents on the applicable eligible list for a nonpermanent or a permanent seasonal position or if the local residents on the applicable eligible list are unavailable, the hiring department or agency may obtain referrals of qualified job applicants for these positions from the job service office of the Department of Labor and Workforce Development serving the area and from those applicants select a qualified person who is a local resident for the position.</p>	<p>Notwithstanding the provisions of AS 39.25.195, a hiring department or agency may grant a preference to local residents in the appointment of nonpermanent employees or in the appointment of permanent employees to perform seasonal work assignments of 180 calendar days or less in a 12-month period. If there are no local residents on the applicable list of applicants qualified for a nonpermanent or a permanent seasonal position or if the local residents on the applicable list of applicants qualified for the position are unavailable, the hiring department or agency may obtain referrals of qualified job applicants for these positions from the job service office of the Department of Labor and Workforce Development serving the area and from those applicants select a qualified person who is a local resident for the</p>	<p>Continues replacement of "eligible list" by "list of applicants qualified for..."</p>

		position.	
Section 13 Page 9 Line 9	AS 44.21.020(8) administer a statewide personnel program, including central personnel services such as recruitment, examination, position classification, and pay administration;	Administer a statewide personnel program, including central personnel services such as recruitment, assessment, position classification, and pay administration;	Replaces "examination" with "assessment."
Section 14 Page 9 Line 20	AS 39.25.153(b) Repealed.		Unnecessary. Repeals specific delegations of authority to named agencies; no longer necessary since broader authorities are already delegated. Also, contains a reference to "examination."
	AS 39.25.153(c) Repealed.		Unnecessary. Broader authorities to classify positions are already delegated to agencies.
	AS 39.25.153(d) Repealed.		Unnecessary. Broader authorities to act with respect to position classification are already delegated to agencies.
Section 15 Page 9 Line 21			This section prevents the Personnel Board from adopting regulations relative to the use of WorkPlace Alaska until these

			statutory changes are made.
--	--	--	-----------------------------

Thank you, Madam Chair, for the opportunity to provide this testimony. If you have questions, please do not hesitate to contact me.

HOUSE BILL NO. 317

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/24/00

Referred: House Special Committee on Military and Veterans' Affairs, State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to recruitment, selection, appointment, and promotion of state
2 employees and the duties of the Department of Administration concerning those
3 and other related functions; and providing for an effective date."

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

5 * Section 1. AS 39.25.080(a) is amended to read:

6 (a) State personnel records, including employment applications and
7 examination and other assessment materials, are confidential and are not open to
8 public inspection except as provided in this section.

9 * Sec. 2. AS 39.25.120(b) is amended to read:

10 (b) A person holding a position in the partially exempt service is not required
11 to complete an assessment [TAKE AN EXAMINATION OR QUALIFY OR EARN
12 A PLACE ON A REGISTER], and is not eligible for a hearing by the personnel board
13 in case of dismissal, demotion, or suspension. Positions in the partially exempt service
14 are specifically exempt from the rules established under AS 39.25.150(3) - (10), (12),

1 (13), and (16).

2 * **Sec. 3.** AS 39.25.150 is amended to read:

3 **Sec. 39.25.150. Scope of the rules.** The personnel rules must provide for

4 (1) the preparation, maintenance, and revision by the director of
5 personnel, subject to approval of the commissioner of administration and the personnel
6 board, of a position classification plan for all positions in the classified and partially
7 exempt services; the position classification plan shall include

8 (A) a grouping together of all positions into classes on the basis
9 of duties and responsibilities;

10 (B) an appropriate title, a description of the duties and
11 responsibilities, training and experience qualifications, and other necessary
12 specifications for each class of positions;

13 (2) the preparation, maintenance, revision and administration by the
14 director of personnel of a pay plan for all positions in the classified and partially
15 exempt services; the pay plan (A) shall be based upon the position classification plan;
16 (B) shall provide for fair and reasonable compensation for services rendered, and
17 reflect the principle of like pay for like work; (C) may be amended, approved, or
18 disapproved by the legislature in regular or special session; after the pay plan is in
19 effect, a salary or wage payment may not be made to a state employee covered by the
20 plan unless the payment is in accordance with this chapter and the rules adopted under
21 this chapter or unless the payment is in accordance with a valid agreement entered into
22 in accordance with AS 23.40;

23 (3) the use of employee selection methods, including open competitive
24 assessment devices [EXAMINATIONS], when appropriate, that will fairly evaluate
25 [TEST] the capacity and fitness of the person assessed [EXAMINED] to discharge the
26 duties of the position [CLASS] in which employment is sought;

27 (4) the formulation of a list [ESTABLISHMENT AND
28 MAINTENANCE OF ELIGIBLE LISTS] for appointment and promotion to a
29 position [PROVIDING THE NAMES OF ELIGIBLE CANDIDATES IN ORDER OF
30 THEIR RELATIVE PERFORMANCE IN THE EXAMINATIONS];

31 (5) the procedure for filling positions [CERTIFYING ELIGIBLE

1 CANDIDATES]; the rule adopted under this paragraph may include procedures
2 providing a preference for certifying local residents when appropriate;

3 (6) promotions from within the state service when there are qualified
4 candidates in the state service; vacancies shall be filled by promotion whenever
5 practicable and in the best interest of the state service and promotion shall be by
6 competitive assessment [EXAMINATION] whenever possible; in considering
7 promotions, the applicants' qualifications, performance records, seniority, and conduct
8 shall be evaluated;

9 (7) a period of probation not to exceed one year before an appointment
10 to a position becomes permanent, except that a permanent employee receiving a
11 promotional appointment retains permanent status in the service and job class from
12 which appointed for the duration of the probationary period and may be demoted to
13 a former class without right of appeal, notwithstanding AS 39.25.170, but if the
14 employee is dismissed from the service the appeal rights under AS 39.25.170 apply;

15 (8) nonpermanent and emergency appointments to positions in the state
16 service in accordance with AS 39.25.195 - 39.25.200;

17 (9) provisional appointment without competitive assessment
18 [EXAMINATION] when the recruitment and assessment processes have not
19 identified qualified candidates in sufficient number [APPROPRIATE ELIGIBLE
20 LISTS ARE NOT AVAILABLE];

21 (10) transfers from one department to another and from another merit
22 system jurisdiction to the state service;

23 (11) transfers from one area of the state to another;

24 (12) the reinstatement of a person who resigns in good standing;

25 (13) layoffs for reason of lack of money or work, abolition of positions,
26 or material changes in duties or organization; both performance and seniority records
27 shall be considered in the development of layoff orders;

28 (14) the development, maintenance, and use of employee performance
29 records;

30 (15) the establishment of disciplinary measures which may include
31 disciplinary suspension without pay;

1 (16) the procedures for review of disputed personnel actions, for
2 resolving employee and interagency grievances, and for resolving grievances of the
3 general public concerning the operation of the state personnel system;

4 (17) hours of work for all employees in the state service;

5 (18) methods and procedures covering overtime work and pay;

6 (19) the granting of employment preference rights, not within the area
7 of promotion, to a veteran or prisoner of war under AS 39.25.159;

8 (20) the employment of persons in permanent positions on a part-time
9 basis of 15 hours or more a week, including the employment of two persons to fill one
10 permanent full-time position; these employees shall be designated as permanent
11 part-time employees;

12 (21) the granting of employment preference to severely handicapped
13 persons; this includes the right to provisional appointment without competitive
14 assessment [EXAMINATION] for periods up to four months and the granting of
15 eligibility to a severely handicapped person provisionally appointed under the rules
16 who demonstrates ability to perform the job for permanent appointment without
17 competitive assessment [EXAMINATION]; provisional employment under this
18 paragraph may not exceed four months during a 12-month period; "severely
19 handicapped" as used in this paragraph means persons certified by the director of the
20 division of vocational rehabilitation to be severely handicapped;

21 (22) the establishment of programs facilitating the employment of
22 disadvantaged persons;

23 (23) the delegation, when feasible, of personnel responsibilities and
24 duties to the principal departments of the executive branch;

25 (24) the establishment of a transition period of up to 12 months for an
26 employee to be reappointed to a classified position if the employee's position is
27 withdrawn from the partially exempt or exempt service and placed in the classified
28 service;

29 (25) other rules and administrative regulations, not inconsistent with
30 this chapter, that are necessary for its enforcement.

31 * Sec. 4. AS 39.25.159(a) is amended to read:

1 (a) A veteran or prisoner of war who possesses the necessary qualifications for
 2 a position or job classification applied for under this chapter is entitled to a preference
 3 under this subsection. In an assessment using numerical ratings, points equal to
 4 five percent of the points available from the assessment device or devices shall be
 5 added to the passing score of a veteran, and 10 percent of the points available
 6 from the assessment device or devices shall be added to the passing score of a
 7 disabled veteran or prisoner of war. In an assessment not using numerical
 8 ratings, consideration shall be afforded to a veteran; additionally, an opportunity
 9 to interview for the position shall be afforded to a disabled veteran or
 10 [EXAMINATION TO DETERMINE THE QUALIFICATION OF APPLICANTS FOR
 11 THE CLASSIFIED SERVICE UNDER MERIT SYSTEM EXAMINATION, FIVE
 12 POINTS SHALL BE ADDED TO THE PASSING GRADE OF A VETERAN, 10
 13 POINTS SHALL BE ADDED TO THE PASSING GRADE OF A DISABLED
 14 VETERAN, OR 10 POINTS SHALL BE ADDED TO THE PASSING GRADE OF]
 15 a prisoner of war. A person may receive preference [POINTS] under only one of the
 16 categories described in this subsection or in (c) of this section. A person may use the
 17 preference without limitation when being considered for a position for which persons
 18 who are not currently state employees are being considered. If the scope of
 19 recruitment for a position [CONSIDERATION OF APPLICANTS] is limited to state
 20 employees, preference [POINTS] under this subsection may not be counted. If a
 21 position in the classified service is eliminated, employees shall be released in
 22 accordance with rules adopted under AS 39.25.150(13) [THAT GIVE DUE EFFECT
 23 TO ALL FACTORS]. In the case of a comparison of employees with equal
 24 qualifications on the factors adopted under AS 39.25.150(13) [IF ALL JOB
 25 QUALIFICATIONS ARE EQUAL], a veteran or prisoner of war shall be given
 26 preference over a person who was not a veteran or prisoner of war, and the veteran or
 27 prisoner of war shall be kept on the job. This subsection may not be interpreted to
 28 amend the terms of a collective bargaining agreement.

29 * Sec. 5. AS 39.25.159(c) is amended to read:

30 (c) A member of the national guard who possesses the necessary qualifications
 31 for a position or job classification applied for under this chapter is entitled to a

1 preference under this subsection. In an assessment using numerical ratings, points
 2 equal to five percent of the points available from the assessment device or devices
 3 shall be added to the passing score of a member of the national guard. In an
 4 assessment not using numerical ratings, consideration shall be afforded to
 5 [EXAMINATION TO DETERMINE THE QUALIFICATION OF APPLICANTS FOR
 6 THE CLASSIFIED SERVICE UNDER MERIT SYSTEM EXAMINATION, FIVE
 7 POINTS SHALL BE ADDED TO THE PASSING GRADE OF] a member of the
 8 national guard. A person may use the preference without limitation when being
 9 considered for a position for which persons who are not currently state employees are
 10 being considered. If the scope of recruitment for a position [CONSIDERATION OF
 11 APPLICANTS] is limited to state employees, preference [POINTS] under this
 12 subsection may not be counted. If a position in the classified service is eliminated,
 13 employees shall be released in accordance with rules adopted under AS 39.25.150(13)
 14 [THAT GIVE DUE EFFECT TO ALL FACTORS]. In the case of a comparison of
 15 employees with equal qualifications on the factors adopted under AS 39.25.150(13)
 16 [IF ALL JOB QUALIFICATIONS ARE EQUAL], a member of the national guard
 17 shall be given preference over a person who was not a veteran, prisoner of war, or a
 18 member of the national guard. This subsection may not be interpreted to amend the
 19 terms of a collective bargaining agreement. In this subsection, "member of the national
 20 guard" means a person who is presently serving as a member of the Alaska National
 21 Guard and who has at least eight years of service in the Alaska National Guard.

22 * Sec. 6. AS 39.25.159(d) is amended by adding a new paragraph to read:

23 (4) "consideration" means reviewing a person's entire application in
 24 order to determine whether the person should be selected, rejected, or admitted to
 25 further steps in the assessment or selection process.

26 * Sec. 7. AS 39.25.160(h) is amended to read:

27 (h) A person may not knowingly make a false statement, [CERTIFICATE,]
 28 mark, rating, or report with regard to an assessment [A TEST], certification, or
 29 appointment made under this chapter or in any manner commit a fraud preventing the
 30 impartial execution of this chapter and the personnel rules adopted under this chapter.

31 * Sec. 8. AS 39.25.160(i) is amended to read:

1 (i) A person may not obstruct the right of another person to assessment
2 [EXAMINATION], eligibility, certification, appointment, or promotion under this
3 chapter.

4 * Sec. 9. AS 39.25.195(b) is amended to read:

5 (b) An appointment to state service, except an emergency appointment, shall
6 be made from the list of applicants qualified for the position [AN APPLICABLE
7 ELIGIBLE LIST OR DISPATCHING REGISTER] unless in appropriate circumstances
8 the director has waived this requirement.

9 * Sec. 10. AS 39.25.196(a) is amended to read:

10 (a) Notwithstanding the provisions of AS 39.25.195, a hiring department or
11 agency may grant a preference to local residents in the appointment of nonpermanent
12 employees or in the appointment of permanent employees to perform seasonal work
13 assignments of 180 calendar days or less in a 12-month period. If there are no local
14 residents on the applicable list of applicants qualified for the [ELIGIBLE LIST FOR
15 A] nonpermanent or a permanent seasonal position or if the local residents on the
16 applicable [ELIGIBLE] list of applicants qualified for the position are unavailable,
17 the hiring department or agency may obtain referrals of qualified job applicants for
18 these positions from the job service office of the Department of Labor and Workforce
19 Development serving the area and from those applicants select a qualified person who
20 is a local resident for the position.

21 * Sec. 11. AS 44.21.020 is amended to read:

22 **Sec. 44.21.020. Duties of department.** The Department of Administration
23 shall

24 (1) make surveys and studies to improve administrative procedures,
25 methods, and organization;

26 (2) keep general accounts;

27 (3) approve vouchers and disburse funds for all purposes;

28 (4) operate centralized purchasing and supply services, and necessary
29 storerooms and warehouses;

30 (5) allot space in state buildings to the various departments according
31 to need and available space;

1 (6) supervise telephone, mailing, messenger, duplicating, and similar
2 services adaptable to centralized management;

3 (7) administer the public employees' retirement system and teachers'
4 retirement system;

5 (8) administer a statewide personnel program, including central
6 personnel services such as recruitment, assessment [EXAMINATION], position
7 classification, and pay administration;

8 (9) administer the Alaska Pioneers' Homes;

9 (10) administer and supervise a statewide automatic data processing
10 program;

11 (11) study, design, implement, and manage the telecommunications
12 systems and services of the state under AS 44.21.305 - 44.21.330;

13 (12) [REPEALED

14 (13)] administer state veterans' home facilities; in carrying out its duties
15 under this paragraph, the department shall consult with the Department of Military and
16 Veterans' Affairs.

17 * Sec. 12. AS 39.25.153(b), 39.25.153(c), 39.25.153(d), and ~~39.25.155~~ are repealed.

18 * Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section
19 to read:

20 TRANSITION: REGULATIONS. The personnel board may proceed to adopt
21 regulations to implement the changes made by this Act. The regulations take effect under
22 AS 39.25.140, but not before the effective date of secs. 1 - 12 of this Act.

23 * Sec. 14. Section 13 of this Act takes effect immediately under AS 01.10.070(c).

2123

Sara Felix
Dept of Law

Larry
Chamber
2029

To: Barbara Cotting H STA

From: Sarah Felix
A60

465-2123

or call Dave Stewart,
Div. of Personnel 4431.

3/3/80

3/7/00

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE JAMES

TO: CSHB 317(MLV)

1 Page 5, following line 12:

2 Insert new bill sections to read:

3 **** Sec. 5.** AS 39.25.155(c) is amended to read:

4 (c) Applicants shall be placed on [ELIGIBLE] lists for the vocational
5 classification indicated in their applications [SUBMITTED TO THE DIVISION OF
6 PERSONNEL IN THE ORDER OF THEIR RELATIVE RANKING] based on an
7 assessment of their vocational [TECHNICAL] ability, and place of residence [AND
8 WITHOUT WRITTEN EXAMINATION. APTITUDE OR OCCUPATIONAL TESTS
9 MAY BE GIVEN IF A POSITION REQUIRES A SPECIFIC ABILITY].

10 *** Sec. 6.** AS 39.25.155(e) is amended to read:

11 (d) The director of personnel shall embody a concept combined of vocational
12 [TECHNICAL] ability, place of residence, local hire and area unemployment in the
13 personnel rules to accomplish the intent of this section."

14 Renumber the following bill sections accordingly.

*Terry Cramer
Please draft
for state
Affairs hearing*

*Barbara
6822*

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education & Early Development
State of Alaska

2123

Sara Felix
Dept of Law

James
Chamler
2029

To: Barbara Cotting H STA

From: Sarah Felix

AGO

465-2123

or call Dave Stewart,

Div. of Personnel 4431.

3/2/80

factor which led to the "no" vote is because there was no fence around how much money the legislature could spend; there was no limit and no plan. She emphasized that the legislature needs an overall plan that establishes by statute a healthy dividend that can be protected over the long term. She added that she is not sure if she will support HB 411 and recognized that more work needs to be done on this issue. She reminded the committee that the legislature has three more years to come to grips with the budget deficit and then time is up.

ADJOURNMENT

Number 1714

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:00 a.m.

3/7/00

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE JAMES

TO: CSHB 317(MLV)

1 Page 5, following line 12:

2 Insert new bill sections to read:

3 **** Sec. 5.** AS 39.25.155(c) is amended to read:

4 (c) Applicants shall be placed on [ELIGIBLE] lists for the vocational
5 classification indicated in their applications [SUBMITTED TO THE DIVISION OF
6 PERSONNEL IN THE ORDER OF THEIR RELATIVE RANKING] based on an
7 assessment of their vocational [TECHNICAL] ability, and place of residence [AND
8 WITHOUT WRITTEN EXAMINATION. APTITUDE OR OCCUPATIONAL TESTS
9 MAY BE GIVEN IF A POSITION REQUIRES A SPECIFIC ABILITY].

10 *** Sec. 6.** AS 39.25.155(e) is amended to read:

11 (d) The director of personnel shall embody a concept combined of vocational
12 [TECHNICAL] ability, place of residence, local hire and area unemployment in the
13 personnel rules to accomplish the intent of this section."

14 Renumber the following bill sections accordingly.

*Terry Cramer
Please draft
for state
Affairs hearing*

*Barbara
6822*

FISCAL NOTE

No: 1

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Bill Version: HB 317
(H) Publish Date: 1/24/00

Revision Date/Time (Note if Correction): 12/28/99 11:00 a.m.
Title: "An Act relating to selection, appointment, and promotion of state employees...."
Sponsor: Rules Committee
Requestor: Governor

Department Affected: All Departments
BRU: Personnel
Component: Personnel
COMPONENT SERIAL NO. 2265

Expenditures/Revenues: (Thousands of Dollars)
Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2001	FY 2002	FY2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 2000) cost: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

The statute changes reflect current practices required by Workplace Alaska. Because the new system is not based on examination and creation of eligible lists, references to eligible lists, examinations, etc., have been amended where appropriate. Veteran's preferences which have been available as points on eligible lists are changed to required consideration for 5% veterans and required interviews for 10% veterans. Because these changes reflect current practices, there is no fiscal impact.

Prepared by: Sharon Barton, Director
Division: Personnel

Phone: 465-4429
Date: _____

Approved by Commissioner: Robert Poe Jr
Agency: Department of Administration

Phone: 465-2200
Date: 12/28/99

COMMITTEE COPY PREPARED TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

HB

324

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2135

February 16, 2000

The Honorable Jeanette James
Alaska State Representative
State Capitol, Room 102
Juneau, AK 99801

Re: Hearing Request HB 324 Personal Info In Motor Vehicle Records

Dear Representative James:

I respectfully request that you schedule House Bill 324, an act requiring written consent by the person who is the subject of the information before releasing personal information contained in motor vehicle records, for a hearing in the House State Affairs Committee.

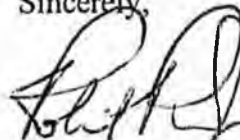
A new federal law was recently passed (PL 106-69, the FY 00 federal DOT appropriations bill), that contained a rider amending the federal Driver Privacy Protection Act (DPPA). Under the previous federal law, states were allowed to release vehicle and driver records without restriction if the state provided a method to allow the person to prevent the release of the record. This was called an "Opt-out" program and Alaska has had this program in effect since 1996. Approximately 9% of Alaska vehicle owners have "opted-out" to prevent the release of their records. The changes to the DPPA prevent release of the driver record for unrestricted use or for marketing, solicitation, or surveys unless the owner specifically consents to the release. This is called an "opt-in" program.

HB 324 amends our current law, AS 28.10.505, to conform to the requirements of the federal law.

If you have any questions or need additional information, please feel free to contact my legislative liaison, David Koivuniemi or me.

Thank you in advance for your cooperation.

Sincerely,



Robert Poe, Jr.
Commissioner

cc: Pat Pouchot, Governor's Legislative Office

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 2, 2000

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 324

HOUSE BILL NO. 324

PERSONAL INFO IN MOTOR VEH. RECORDS

"An Act requiring written consent by the person who is the subject of the information before releasing personal information contained in motor vehicle records, to comply with 18 U.S.C. 2721; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) DOA

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Annette James</i>	✓			
<i>Scott Ogden</i>			✓	
<i>Bill Hudson</i>	✓			
<i>Scott Ogden</i>			✓	

CHAIR'S SIGNATURE Annette James

FISCAL NOTE

No. 1

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Bill Version: HB 324
(H) Publish Date: 2/2/00

Revision Date/Time (Note if Correction): _____
Title: An Act relating to consent before releasing personal information contained in motor vehicle records.....
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Division of Motor Vehicles
Component: Motor Vehicles
COMPONENT SERIAL NO. 2348

Expenditures/Revenues: (Thousands of Dollars)
Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2001	FY 2002	FY2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	(200.0)	(200.0)	(200.0)	(200.0)	(200.0)	(200.0)
------------------------	---------	---------	---------	---------	---------	---------

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 2000) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Vehicle and driver records are sold across the counter at DMV for \$5 per record and the entire vehicle Database is sold to Information Services providers at \$50 per 1000 records. The use of vehicle records will be restricted to only a limited number of authorized uses under this bill and that will reduce the revenue derived from the sale of vehicle records by approximately \$200.0 per year.

There will be no operating cost to implement this bill.

Prepared by: Charles R. Hosack, Deputy Director
Division: Motor Vehicles

Phone: (907) 269-5559
Date: 12/15/99

Approved by Commissioner: Robert Poe Jr.
Agency: Department of Administration

Phone: 465-2200
Date: 12/15/99

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

HB

331

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 3, 2000

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/21/00

The STATE AFFAIRS Committee considered:

HB 331

HOUSE BILL NO. 331

ALASKA NATL GUARD/NAVAL & STATE MILITIA

"An Act relating to payment, allowances, and benefits of members of the Alaska National Guard and Alaska Naval Militia in active service; relating to computation of certain benefits for members of the Alaska State Militia; and providing for an effective date."

recommends it be replaced with the following committee substitute _____] the same title
] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

[] fiscal note(s) _____

[] fiscal note(s) _____

[] zero fiscal note(s) _____

[] zero fiscal note(s) DMVA

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Glennette James</i>	✓			
<i>Adrian S. Wiley</i>	✓			
<i>James H. ...</i>			✓	
<i>Bill Huls</i>	✓			

CHAIR'S SIGNATURE Glennette James

HB 331

TONY KNOWLES
GOVERNOR
GOVERNOR OF THE STATE OF ALASKA

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

PO Box 1900
Juneau, Alaska 99801-1900
(907) 465-1500
Fax (907) 465-1532
www.governor.state.ak.us

February 1, 2000

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

When members of the Alaska National Guard and Alaska Naval Militia are called to active service for the state, it's important they be adequately compensated for their valuable work in a timely manner. To that end, this bill simplifies the pay scale and system for the Alaska National Guard (ANG) and Alaska Naval Militia (NM).

Currently, when called to state active duty, members of the ANG and NM receive pay and allowances equal to those provided by federal law for members of equivalent grades of the United States armed forces. Daily minimum pay is determined by grade and years of service with a statutory minimum. Allowances include food, housing, cost-of-living increase, and quarters and are determined based on the circumstances of each individual.

Calculating pay and allowances under the current law requires obtaining information from the federal government regarding current pay scales and allowance amounts. This can cause significant delays in payment of ANG and NM members. It is also a labor-intensive system involving numerous manual calculations with an unreasonable chance for errors.

This bill simplifies the pay system for state active duty by retaining statutory minimum pay, disregarding years of service, and eliminating allowances. Members will simply receive 200 percent of the minimum basic pay for a member of an equivalent grade in the active military -- or the statutory minimum, if greater. Simplifying the calculation will save administrative time and will result in members of the ANG and NM receiving their checks in a more timely fashion.

The Honorable Brian Porter
February 1, 2000
Page 2

The bill also provides that this proposed new pay scale will be used to calculate workers' compensation and death benefits for the organized militia, which includes the Alaska State Militia as well as the ANG and NM.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tony Knowles".

Tony Knowles
Governor

MEMORANDUM

State of Alaska
Department of Law

TO: BG Phillip E. Oates
Commissioner, DMVA

DATE: July 7, 1999

FILE NO:

TEL. NO: 269-5178

SUBJECT: Alaska State Defense Force Pay
Authorization

FROM: Mary A. Gilson
Assistant Attorney General
Governmental Affairs Section, Anchorage

You have requested a legal opinion concerning whether members of the Alaska State Militia (ASM) also known as "the Alaska State Defense Force"¹ can receive pay equivalent to military active duty pay for their services when called to state active duty. As we understand the facts, for a number of years members of the ASM have received pay for their services while in active duty status.² ASM pay rates are based on the member's ASM military grade. Military grades in the ASM mirror the uniformed service and ASM personnel have received pay equivalent to military active duty pay when called to state active duty. Recently questions have arisen regarding the Department of Military and Veterans Affairs' (DMVA) authority to pay the ASM members at this level when they are called to state active duty.

I. Brief Answer

This opinion confirms our previous oral advice that paying ASM members pay equivalent to military active duty pay when called to state active duty is not authorized.

DMVA's longstanding practice of paying ASM members wages equivalent to their military rank within ASM while in active duty status does not in itself provide the authority for such payment. There must be some legal authority. The Alaska statutes provide that the National Guard and Naval militia are to receive pay and allowances equal to those provided for members of equivalent grades of the United States armed forces but there is no similar authorization to pay the ASM at that level. The absence of any statutory language authorizing payment of the ASM for state active duty at a level equivalent to the active military compels the conclusion that, under existing law, such payment is not legally authorized. Legislative action is necessary to provide authorization. Our department can provide assistance in drafting such legislation if desired.

¹ The "Alaska State Militia" is commonly known as the "Alaska State Defense Force". This may be as a result of federal statutory language which provides that states can maintain a "defense force" in addition to the National Guard. See 32 U.S.C. 109(c).

² The ASM does not receive pay for attending training and routine drills.



ASM members who are hired as emergency employees or some other class of state employee would, of course, be paid but the pay would be based on the job classification not on their ASM military grade. Emergency employees can be appointed for up to 30 days if immediate action is needed to carry on work that is required in the public interest. AS 39.25.200(3). Therefore, ASM members could be called out and appointed as emergency employees. Using this mechanism, pay would be authorized. The procedures for appointing emergency employees would have to be followed and, as noted, the pay level would not be tied to active military pay levels but would be related to the work performed.

Any ASM forms, written procedures, manuals, etc. should be reviewed to ensure that any reference to military pay for services is removed. Notice should be sent immediately to all ASM members that there has been a determination that under current law there is no authority for the ASM to be paid military pay for state active duty, and therefore, until there is a change in the law, there will be no payment for future deployments. The notice should state that pay is authorized if a member is hired as an emergency employee or nonpermanent employee, but the amount would depend on the job class not on military rank.

To ensure effective notice, there should be no deployments until such notice is given.

II. Analysis

A. ASM Background and Composition

Federal law provides that in addition to the National Guard, a state may provide and maintain at its own expense a defense force. 32 U.S.C. 109(c); Perpich v. Dept. of Defense, 110 S. Ct. 2418, 2429 (1990). Federal law does not address whether a state defense force is to be paid when called out to active duty.

The Military Code of Alaska, AS 26.05.010 – AS 26.05.350, provides the state statutory scheme governing the operation of the ASM. There are no state regulations. The ASM is established under AS 26.05.010 as part of Alaska's "organized militia." The organized militia in Alaska consists of the Alaska National Guard, the Alaska Naval Militia, and the Alaska State Militia. AS 26.05.010(b)(1). The ASM became part of the organized militia in 1968. Secs. 1-2, ch. 44, SLA 1968. Enlistment in the ASM is voluntary. AS 26.05.100 The composition of the ASM is addressed under AS 26.05.030(d) which provides:

(d) The Alaska State Militia consists of units authorized by the governor, and manned by volunteer personnel qualifying under state law and regulation. All State Militia personnel shall be (1) appointed, commissioned, or warranted, and assigned by the governor or the adjutant general as the governor's designee; (2) subject to serve on state active duty at the call and by order of the governor.

B. Role of the ASM

The role of the ASM is to augment the National Guard or Naval Militia or to act in their stead when those forces are not available. AS 26.05.100. That section provides:

A state militia may be organized through voluntary enlistments under regulations as to discipline and training which may be prescribed by the governor. During the time that the Alaska National Guard or the Alaska Naval Militia, or any part of either of them, is not available to the state by reason of active federal service, or the National Guard or Naval Militia requires augmentation to perform its state mission, the governor may activate the state militia. (Emphasis added.)

AS 26.05.070 outlines the circumstances which may trigger the governor's use of the organized militia – which as noted above, includes the ASM. Under AS 26.05.070, the Governor may order the organized militia into active state service when needed in the case of events such as war, disaster, catastrophe, riots, etc. or when responsible civil authorities fail to preserve law and order or protect life and property, or the governor believes such failure is imminent. See AS 26.05.070.

If called into active service, the ASM, like other parts of the organized militia, functions as an additional police force retaining its separate identity and operating as a military organization under separate command. The ASM cooperates with, but does not supercede civilian law enforcement. They are "to execute the laws and to perform duties in connection with them that the governor considers proper," and can take action ". . . for the re-establishment of law and order and for the protection of life and property." AS 26.05.070. For example, ASDF personnel assisted in search and rescue after a recent avalanche.

C. Payment of the ASM

Pay and allowances under the Military Code are specifically addressed in AS 26.05.260(b). AS 26.05.260(b) provides in pertinent part:

(b) Members of the Alaska National Guard and Alaska Naval Militia are entitled to receive, for each day of active service under AS 26.05.070, pay and allowance equal to those provided by federal laws and regulations for members of equivalent grades of the United States armed forces. However, a member may not receive less than . . . (Emphasis added.)

The plain language of AS 26.05.260(b) authorizes pay and allowances only for members of the Alaska National Guard and Alaska Naval Militia. The ASM is not mentioned. Section AS 26.05.260 has been in existence in various forms since statehood and the ASM has never been mentioned in the section providing for pay and allowances. Until 1972 only components of the National Guard were entitled to pay and allowances. In 1973, the Naval Militia was added to the language of AS 26.05.260 which pertained to pay and allowances. Secs. 9-1, ch. 34, SLA 1973. The legislature had the opportunity at

that time to add the ASM and did not. In 1981 AS 26.05.260 was amended again and AS 26.05.260(b) was enacted in its current form. Secs. 1-4, 8, ch. 56, SLA 1981. There is no legislative history indicating an effort to include the ASM in the section providing for pay and allowances when AS 26.05.260(b) was amended in 1981.

The remaining subsections of AS 23.05.260 address workers' compensation and death benefits. As explained below, none of these subsections provide the authority to pay the ASM for active duty. Under current law, AS 26.05.260(d) provides workers' compensation benefits for members of the organized militia. AS 26.05.260(e) provides death benefits.³

Prior to 1989, only the National Guard or Naval Militia were entitled to workers' compensation or death benefits if injured or killed while on active duty. In 1989 the term "organized militia" was inserted into subsections AS 23.05.260(d) and (e) in place of the term "Alaska National Guard or Alaska Naval Militia." Secs. 1-2, ch. 53, SLA 1989. The purpose of the 1989 amendments was to provide the ASM with the same workers' compensation and death benefits that the other components of the organized militia were already receiving. The legislature could have also amended the pay and allowances subsection 260(b) at that time to substitute "organized militia" for "Alaska National Guard or Alaska Naval Militia," as was done in subsections 260(d) and 260(e), but the legislature chose not to do so.

AS 26.05.260(h) was enacted in 1989 in the same piece of legislation as the amendments to 260(d), (e) discussed above. Sec. 4, ch. 53, SLA 1989.⁴ Subsection 260(h) addresses the level of benefits a member of the ASM is entitled to if injured or killed in the line of duty and bases the computation of benefits on the level of earnings a member of the regular armed forces of equivalent rank would receive.

AS 26.05.260(h) states: "For purposes of computation of benefits under AS 23.30, the earnings of a member of the organized militia will be presumed to be no less than the pay and allowances authorized for a member of the regular armed forces of the United States in the same grade or rank as the organized militia member at the time of the injury or death."

³ AS 26.05.260(d) provides:

A member of the 'organized militia' who, while performing duties under AS 26.05.070, including transit to and from the member's home of record, suffers an injury or disability in the line of duty is entitled to all compensation and benefits available under AS 23.30 (Alaska Workers' Compensation Act) for injuries or disabilities suffered in the line of duty. (Emphasis added.)

AS 26.05.260(e) provides:

If a member of the organized militia dies as a result of an injury or disability suffered in the line of duty while performing duties under AS 26.05.070, including transit to and from the member's home of record, death benefits shall be paid to the person in the amounts specified in AS 23.30.215. (Emphasis added.)

⁴ Subsection (h) was enacted as (i) and renumbered in 1989.

Statutory authorization of workers' compensation and death benefits at a certain level is not equivalent to authorizing payment of wages at that level or any other. Nor does providing workers' compensation and death benefits necessarily imply that wages will be also paid. For example, residents of Alaska temporarily volunteering in a civil defense or disaster relief function for the state are considered employees of the state for the purposes of the Workers' Compensation Act and therefore are entitled to workers' compensation and death benefits if injured or killed while providing services. See AS 23.30.244. However, it cannot be said that AS 23.30.244 provides authority to pay these volunteers wages.

Section 3 of the 1989 legislation amending AS 26.05.260 also amended the definition of the word "member" which is used throughout the section. See sec. 3, ch. 53, SLA 1989. As with the amendments to 260(d) and 260(e), the term "organized militia" replaced "Alaska National Guard or Alaska Naval Militia" in the definition of "member". Under AS 26.05.260 "member" means an active commissioned or warrant officer or enlisted man or woman in the organized militia." (Emphasis added). AS 26.05.260(i).⁵ Expanding the definition of "member" to mean an officer or enlisted person in the "organized militia" is consistent with the amendment to subsections 260(d) and 260(e).

An argument could be made that because the word "member" is also used in subsection 260(b), the ASM is by implication included in pay and allowances. However, we do not believe a court would give much credence to this argument. The language of 260(b) predates the 1989 legislation. The word "member" is used three times in 260(b). The pertinent language is quoted above. The first reference is specifically to "members" of the National Guard or Naval Militia. The second reference is to members of the Armed Forces. The third reference, read in context, relates to the National Guard of Naval Militia. To imply that the term is to be read in a broader sense would be a strained reading.

Further, legislative history supports the view that the 1989 amendments were not meant to alter the pay authorization in AS 26.05.260(b) but were intended to provide ASM members with workers' compensation and death benefits. Governor Cowper's transmittal letter to the legislature stated "This bill expressly extends workers' compensation coverage to members of the ASM . . . this ensures adequate compensation for injuries incurred incident to state service and the bill limits the state's liability for injuries to the remedy provided in AS 23.30." 1989 Senate Journal 43.

Finally, viewing the Military Code as a whole, it is evident that when the legislature intended to provide benefits to members of the entire "organized militia" it said so. See AS 26.05.260(d) (workers' compensation benefits); AS 26.05.260(e) (death benefits). When it intended for benefits to only be provided for the National Guard and Naval Militia the statute providing the benefit refers only to the "Alaska National Guard or the Alaska Naval Militia" and the ASM is not mentioned. See AS 26.05.222-26.05.229 (retirement benefits); AS 26.05.265 (reenlistment bonus); AS 26.05.295 (educational assistance); AS 26.05.296 (tuition assistance). Under AS 26.05.260(b), the legislature has not provided for the "organized militia" to receive pay and allowances, but only for the "Alaska National

⁵ Subsection (i) was enacted as (h) and renumbered in 1989.

Guard or Naval Militia". Therefore, we believe 260(b) means what it says and does not provide authorization for the ASM to receive active duty pay.

In addition to AS 26.05.260, there is only one other section in the Military Code which mentions "pay". AS 26.05.270 states that "If the organized militia, or any part of it, is called into active service of the state in case of war, disaster, insurrection, rebellion . . . vouchers for legally allowed pay and expenses for this services or compensation for injuries shall be drawn upon the general fund of the state treasury and paid out of money in that fund not otherwise appropriated." (Emphasis added.) The use of the phrase "legally allowed" in AS 26.05.270 does not in itself authorize pay and expenses but merely provides that those amounts already "legally allowed" shall be drawn from the general fund. Therefore, AS 26.05.270 does not provide authority for payment of the ASM.

An argument was raised that to require members of the ASM to serve without compensation would be a "taking" in violation of the Alaska Constitution.⁶ Alaska's "takings clause" prohibits the taking of private property for a public purpose without just compensation. Alaska Const., art. I, sec 18. The Alaska Supreme Court has held that "personal services" are private property. Delisio v. Alaska Superior Court, 740 P.2d 437 (Alaska 1987). In Delisio, the court determined that the government cannot require an attorney to represent an indigent person without paying just compensation because to do so would be an unconstitutional "taking" of the attorney's services (*i.e.* private property). See Id. at 443.

We do not believe Delisio is applicable. In Delisio, Delisio made his living as an attorney. The trial court ordered him to represent an indigent defendant for free or be sentenced to jail for contempt. In reversing the lower court, the Supreme court held that compelling Delisio to serve without just compensation was a "taking". Id. Here, members of the ASM are volunteers. The government has not ordered them to provide their services for free. ASM members volunteer to be part of the ASM and thus are subject to the call of the Governor on an occasional basis when needed to supplement the National Guard or Naval Militia. See AS 26.05.030; 26.05.100; 26.05.070. If an ASM member did not answer the call to active duty, they may be subject to demotion or discharge from the ASM, but it cannot be said that they are "compelled" to provide the service. Being available for call out to active duty is a condition of their volunteerism. If they do not answer the call out, they cannot be part of the organization, but unlike Delisio there is no government imposed fine or jail time for failure to provide services. Based on Delisio, we do not believe a "takings" argument has merit in this situation.⁷

In sum, there is no authority under current law to pay ASM members pay equivalent to military active duty pay when they are called to active duty. Pay for state active duty is not authorized unless members are hired as emergency employees or some other class of employee. Pay would be based on the job class not on military rank. Notice should go out to the ASM members immediately. If

⁶ See memorandum to Jim Chase from Lercy DeVaux dated December 10, 1998.

⁷ The DeVaux memorandum also asserted that it would be a violation of due process to deprive ASM members of pay equivalent to that of the regular military. Due process is inapplicable here. The issue is whether ASM members are entitled to be paid for their volunteer services. The conclusion is that they are not. If there is no entitlement to a benefit there can be no "protected interest" and therefore no entitlement to due process if the benefit is discontinued.

BG Phillips E. Oates
Commissioner, DMVA

July 7, 1999
Page 7

your department needs assistance in drafting legislation to change current law, please do not hesitate to call.

MAG:vb

STATE OF ALASKA
 Department of Military and Veterans Affairs
 Alaska State Defense Force
 49th Civil Support Brigade
 Post Office Box 5800
 Fort Richardson, Alaska 99505-5800

APPENDIX 2-B
DRILL PAY TABLE (One UTA)
 Effective 1 July 1999

When pay is authorized for State Active Duty the following pay table shall apply for each duty day. State minimum statutory pay is \$106.00 per duty day for all grades with a lower pay scale. A duty day for pay is 24 hours.

Pay Grade

E-1 > 4 mo -	29.59
E-1 < 4 mo -	31.98
E-2	35.86
E-3	39.30
E-4	41.76
E-5	46.14
E-6	52.66
E-7	60.63
E-8	82.75
E-9	95.91
W-1	62.69
W-2	71.01
W-3	81.28
W-4	88.46
W-5	140.71
O-1	63.77
O-2	77.07
O-3	90.48
O-4	106.04
O-5	121.31
O-6	141.91
O-7	186.31

*For telephone
 call 7/20
 w/Carol*

*not using
 this for
 we have
 no authority*

CALCULATION OF STATE ACTIVE DUTY:

STEP 1 (Determining Daily Base Pay Amount): Whenever the military pay rates change (which occurs at least annually on Jan 1 of each year) the minimum daily base pay amounts for each pay grade must be hand calculated. The following are the steps required to determine this minimum daily base pay rate:

- A. Go to Defense Department Internet site and download current military pay table
- B. Divide the monthly base pay amount for each pay grade (E1 through E9) (O1 through O6) and (W1 through W5) by 30 (days per month). This calculation must be done for each pay grade approximately 15 times since military members receive monthly base pay increases when the member passes 2 years of service, 3 years of service and then every 2 years thereafter through 26 years of service. Total hand calculations required: 345
- C. When a SAD order is received I must determine the individuals rank and years of service to determine what that individuals daily base pay amount is.

STEP 2 DETERMINING ALLOWANCES (SEPARATE RATIONS/HOUSING/COST OF LIVING)

- A. **Separate Rations (BAS):** This rate is a fixed daily amount with officer and enlisted members receiving different amounts. The current daily rates are found on the Defense Departments web site.
- B. **Basic Allowance For Housing (BAH):** There are different housing rates for married and single members. The current rates are determined by going to the Defense Departments web site and inputting the individual's rank and zip code location (Zip code 99577 (Anchorage) is used for this calculation). The web site then provides the monthly housing rate for married and single individuals of that grade living in 99577. That monthly amount must then be manually divided by 30 (days per month) to determine the individual's daily housing rate.
- C. **Cost of Living Allowance (COLA):** These rates are found at on the Department of Defense web site and are updated by DOD every two weeks. The input data to determine the correct rate for a member includes their pay grade, years of service, number of dependents and location code (AK005) for Alaska. The program then provides the daily COLA amount.
- D. **Other Allowances:** Individual on flying status (pilots and aircrew members) received an addition flight pay allowance. When an SAD order is received that indicates that the member is a pilot or aircrew member I must go to the Defense Departments web site to determine what that daily amount is. It is based their status (pilot or aircrew member), rank and years of service.

Step 3: Calculating Individuals SAD Daily Pay Rate:

- A. Once all of the above daily pay and allowance figures are determined they must be added together to determine the daily pay rate for each individual. That amount must then be compared to the State Daily Minimum amount (Hand calculated in July of each year using a formula contained in the statutes). The individual is then entitled to whichever daily amount is greater.
- B. The Individuals SAD daily amount is then multiplied by the number of days the member performed SAD during that pay period to determine the total amount of pay the individual is due.
- C. The order is then forward to State payroll personnel for issuance of a State payroll warrant.

Post-it [®] Fax Note	7871	Date	2/24	# of pages	▶
To	Michael Carroll	From	Rick J P		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			

CALCULATION OF STATE ACTIVE DUTY (SAD) - PROPOSED PROCEDURES

Step 1: Determining Alaska National Guard Members' SAD Daily Pay Rate: Whenever the active duty military pay rates change (which occurs at least annually on Jan 1 of each year) the minimum daily pay amounts for each pay grade must be re-calculated. The following are the steps required to determine this minimum daily base pay rate:

- A. Go to Defense Department Internet site and download current active duty military pay table.
- B. Divide the minimum monthly base pay rate for each pay grade (E1 through E9) (O1 through O6) and (W1 through W5) by 30 (days per month) to determine the minimum daily base pay rate. Total calculations required: 23
- C. Multiply the minimum daily base pay rate for each pay grade by 200% (proposed percentage) to determine Alaska SAD Daily Pay Rate. Total calculations required: 23

Step 2: Calculating Individuals SAD Daily Pay When Duty is Performed:

- A. Compare the members Alaska SAD daily base pay rate to the current State Active Duty Daily Minimum amount (Calculated in July of each year using a formula contained in the statutes. \$105.30 per day a/o 1 July 1999). The individual is then entitled to whichever daily amount is greater.
- B. Multiply the member's Alaska SAD daily base pay rate or SAD minimum amount (whichever is greater) by the number of days the member performed duty during that pay period to determine the total amount of pay the individual is due.
- C. The SAD order with the pay calculations is then forwarded to DMVA payroll personnel for issuance of a State payroll warrant.

FISCAL NOTE

No: 2

Bill Version: CSHB 331 (MLV)

Bill (H) Publish Date: 3/3/00

STATE OF ALASKA 2000 LEGISLATIVE SESSION

Revision Date: 01-Mar-00
 Title: An Act relating to compensation of members
of the Alaska National Guard and Alaska Naval Militia ...
 Sponsor: Rules Committee
 Requestor: (H) MLV

Dept Affected: Military & Veterans Affairs
 BRU: Alaska National Guard
 Component: Office of the Commissioner
 Component No. #414

Expenditures/Revenues (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below.

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: \$ n/a

POSITIONS

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill simplifies the method of calculating pay and allowances for members of the National Guard and Naval Militia. There is no fiscal impact but administrative workload will be reduced in the event the National Guard is called onto Active Duty to respond to a state disaster or emergency. In addition, Guard and Naval Militia members will be paid more timely and accurately than in the past with this change.

This bill also clarifies the status of the Alaska State Defense Force when called to State Active duty. The department will pay to ASDF when called to active duty in accordance with state pay scales (level of work performed) but will recognize that the ASDF is subject to the ASDF command structure and discipline.

Prepared by: Carol B. Carroll Phone: 465-4730
 Division: Administrative Services Date: 01-Mar-00
 Approved by Commissioner: Phillip Oates Date: 01-Mar-00
 Agency: Military & Veterans Affairs

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office