

STATE OF ALASKA

EXECUTIVE ORDER NO. 91

1995



1 Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance
2 with AS 24.08.210, I order the following:

3 * **Section 1.** FINDINGS. As governor, I find that the transfer of the office of equal
4 employment opportunity from the Department of Administration to the Office of the Governor
5 would be in the best interests of efficient administration. The transfer will permit closer
6 coordination within state government regarding equal employment opportunity policy, and will
7 ensure that pressing issues in the area of equal employment opportunity will come to the
8 immediate attention of the Office of the Governor.

9 * **Sec. 2.** AS 44.19 is amended by adding new sections to read:

10 **ARTICLE 9A. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY.**

11 Sec. 44.19.450. **OFFICE ESTABLISHED.** The office of equal employment
12 opportunity is established in the Office of the Governor. The governor shall appoint
13 a director to administer the office.

14 Sec. 44.19.451. **POWERS AND DUTIES OF THE OFFICE.** (a) The office
15 shall administer the equal employment opportunity program for the executive branch
16 of state government to ensure compliance with AS 44.19.450 - 44.19.458 and shall

1 (1) assist state officials to carry out their equal employment opportunity
2 responsibilities, including promoting the recruitment, employment, training, and
3 retention of members of protected classes, and recommend solutions to any problems
4 identified;

5 (2) train state managers and supervisors in their equal employment
6 opportunity and affirmative action responsibilities and offer orientation programs to
7 employees to inform them of their rights and responsibilities under AS 44.19.450 -
8 44.19.458;

9 (3) monitor records of personnel actions, develop auditing and reporting
10 systems to acquire statistical information, and prepare federal and state reports
11 concerning the composition of the work force;

12 (4) prepare and submit the affirmative action plan for employment in
13 the executive branch of state government to the governor;

14 (5) prepare guidelines for the affirmative action programs of agencies
15 and review, audit, and make recommendations concerning the programs;

16 (6) ensure that agencies comply with the affirmative action plan and
17 with the agency affirmative action program;

18 (7) implement standards by which performance evaluations of
19 supervisors reflect compliance with affirmative action plans and objectives, including
20 the granting or denial of merit increases;

21 (8) assist the division of labor relations in collective bargaining
22 negotiations between the state and employee bargaining organizations to ensure that
23 each collective bargaining agreement negotiated by the state ensures equal employment
24 opportunity;

25 (9) file quarterly reports with the governor and the legislature
26 concerning agency compliance with and progress in its affirmative action program, the
27 affirmative action plan, state and federal equal employment opportunity laws and
28 regulations;

29 (10) accept, investigate, and resolve complaints of discrimination from
30 employees, previous employees, or applicants for employment;

1 (11) serve as primary liaison between the executive branch and state
2 and federal agencies, minority and women's organizations, and community groups
3 concerned with equal employment opportunity; and

4 (12) prepare and submit an annual report to the governor and the
5 legislature by February 15 on the progress and problem areas in the equal employment
6 opportunity program and the implementation of the affirmative action plan.

7 (b) The office may

8 (1) recommend legislative or administrative action to the governor
9 relating to equal employment opportunity and affirmative action matters;

10 (2) require the purging of the records of a complaint of unlawful
11 discrimination from the personnel file of an employee who has filed a complaint of
12 unlawful discrimination;

13 (3) forbid an agency to hire or promote employees based on a
14 discriminatory employment practice;

15 (4) require an agency to reverse a personnel action including a hiring
16 decision if it finds that the action was based on a discriminatory employment practice;

17 (5) require an agency to change its selection procedures if it finds that
18 the procedures violate state or federal laws prohibiting employment discrimination; and

19 (6) when there is reason to believe that an employee has violated this
20 subsection, require the agency to investigate and to impose discipline if the
21 investigation reveals facts warranting it.

22 (c) A collective bargaining agreement adopted under AS 23.40.070 - 23.40.260
23 (Public Employment Relations Act) must be consistent with principles of equal
24 employment opportunity and affirmative action. AS 44.19.450 - 44.19.458 supersede
25 the provisions of AS 39.25 (State Personnel Act).

26 Sec. 44.19.452. ADMINISTRATIVE REGULATIONS. The director of the
27 office shall adopt regulations under AS 44.62 (Administrative Procedure Act) to carry
28 out the office's duties.

29 Sec. 44.19.453. AFFIRMATIVE ACTION PLAN. The governor shall
30 establish an equal employment opportunity program and adopt annually an affirmative

1 action plan for the executive branch of state government. The plan remains in effect
2 until the governor establishes a subsequent plan. The office shall work with each
3 agency to enhance equal employment opportunity.

4 Sec. 44.19.454. COMPLIANCE WITH AFFIRMATIVE ACTION PLAN. (a)
5 Each agency shall comply with the affirmative action plan. Each commissioner or
6 executive head of an agency shall adopt an affirmative action program to implement
7 the plan within the agency. At the request of the office, a state official shall report to
8 the office about agency employment practices and activities to implement and comply
9 with the plan or program.

10 (b) When the office finds that an agency has violated the affirmative action
11 plan or its affirmative action program, the office may

12 (1) suspend the hiring authority of the agency; and

13 (2) impose mandatory affirmative action measures on the agency to
14 bring the agency into compliance.

15 Sec. 44.19.455. EMPLOYMENT DISCRIMINATION COMPLAINTS. (a)
16 The office shall accept complaints of employment discrimination in the executive
17 branch of state government and shall confer with the complainant and the agency
18 involved to bring about an informal resolution of complaint.

19 (b) An agency shall notify the office when the agency receives a complaint
20 alleging employment discrimination.

21 (c) The office may not make public the records of a complaint or investigation.

22 Sec. 44.19.456. RETALIATION PROHIBITED. (a) An agency, officer, or
23 state employee may not directly or indirectly refuse to hire, transfer, or promote, or
24 dismiss, demote, suspend, lay off, or otherwise discipline a person for filing a
25 complaint with the office for a failure to comply with affirmative action or equal
26 employment opportunity or for assisting the office in an investigation of a complaint.

27 (b) A person who knowingly violates this section is liable for a civil penalty
28 of not more than \$1,000.

29 Sec. 44.19.457. ACCESS TO CONFIDENTIAL RECORDS. The office may
30 have access to all data, records, and reports necessary to carry out its functions under

1 AS 44.19.450 - 44.19.458. The office may not make public information designated
2 as confidential by AS 39.25.080 or another law. However, the office may make public
3 statistical information compiled from confidential records.

4 Sec. 44.19.458. DEFINITIONS. In AS 44.19.450 - 44.19.458,

5 (1) "agency" means a department, office, agency, public corporation,
6 board, commission, authority, or other organizational unit of the executive branch;

7 (2) "employment in the executive branch of state government" includes
8 employment as a permanent, probationary, provisional, nonpermanent, or temporary
9 employee in the classified, partially exempt, or exempt services in the executive branch
10 of state government;

11 (3) "member of a protected class" means a person protected by federal
12 or state laws that prohibit discrimination in employment or a person who experiences
13 or has experienced difficulty in obtaining employment or advancement in employment
14 because of another factor not related to merit;

15 (4) "office" means the office of equal employment opportunity in the
16 Office of the Governor.

17 * Sec. 3. AS 44.21.020(12), 44.21.500, 44.21.501, 44.21.502, 44.21.503, 44.21.504,
18 44.21.505, 44.21.506, 44.21.507, and 44.21.508 are repealed.

19 * Sec. 4. TRANSITION. (a) Litigation, hearings, investigations, and other proceedings
20 pending under a law repealed by this Order, or in connection with functions transferred by this
21 Order, continue in effect and may be continued and completed notwithstanding a transfer or
22 repeal provided for in this Order.

23 (b) Regulations adopted by the commissioner of administration under authority of
24 former AS 44.21.502 before March 18, 1995, remain in effect until regulations are adopted
25 under AS 44.19.452 by the director, and take effect. The director of the office of equal
26 employment opportunity may enforce the regulations adopted under AS 44.21.502 until the
27 director's own take effect.

28 (c) Contracts, rights, liabilities, and obligations created by or under a law repealed by
29 this Executive Order, and in effect on March 17, 1995, remain in effect notwithstanding this
30 Order's taking effect. Records, equipment, appropriations, and other property of an agency

- 1 of the state whose functions are transferred under this Order shall be transferred to implement
- 2 the provisions of this Order.
- 3 * Sec. 5. This Order takes effect March 18, 1995.

DATED: January 15, 1995

/s/ Tony Knowles
Tony Knowles, Governor