April 24, 2013

The Honorable Sean Parnell
Governor
State of Alaska
P.O. Box 11001
Juneau, Alaska 99811-0001

Re: HCS CSSB 95(FIN) -- relating to the compensation, allowances, geographic differentials in pay, and leave of certain public officials, officers, and employees not covered by collective bargaining agreements; relating to the compensation and geographic differentials in pay of certain justices and judges; relating to certain petroleum engineers and petroleum geologists employed by the Department of Natural Resources; relating to increased pay for certain partially exempt employees of the state in specific circumstances; and making conforming amendments
Our file: JU2013200231

Dear Governor Parnell:

At the request of your legislative director, we have reviewed HCS CSSB 95(FIN), relating to the compensation, allowances, geographic differentials in pay, and leave of certain public officials, officers, and employees not covered by collective bargaining agreements; relating to the compensation and geographic differentials in pay of certain justices and judges; relating to certain petroleum engineers and petroleum geologists employed by the Department of Natural Resources; relating to increased pay for certain partially exempt employees of the state in specific circumstances; and making conforming amendments.

The bill would modify existing statutory provisions establishing the salaries, geographic pay differentials, and personal leave benefits of classified and partially exempt employees in the executive branch of state government who are not members of a collective bargaining unit, employees of the legislature, certain exempt officers and employees of the executive branch, and certain employees of the judicial branch. The bill also would move to the exempt service of state government certain petroleum engineers and petroleum geologists employed by the Department of Natural Resources and the Alaska Oil and Gas Commission.

Sectional Analysis

Section 1 of the bill would amend AS 22.05.140(c) to provide that supreme court justices are entitled to geographic cost-of-living adjustments on the first $100,000 of their annual base salary based on the location of their primary office assignment and according to the geographic cost-of-living adjustments set out in AS 39.27.020(a) in sec. 15 of the bill.

Section 2 of the bill would amend AS 22.10.190(c) to provide that superior court judges are entitled to geographic cost-of-living adjustments according to the same criteria and standards established for supreme court justices under sec. 1 of the bill.

Section 3 of the bill would amend AS 22.15.220(d) to provide that district court judges are entitled to geographic cost-of-living adjustments according to the same criteria and standards established for supreme court justices under sec. 1 of the bill and superior court judges under sec. 2 of the bill.

Section 4 of the bill would amend AS 39.20.200(a) to provide that employees who are first employed before July 1, 2013, in a position for which leave may accrue, would be entitled to accrue leave at a certain rate based on the number of years of service. Section 4 of the bill would continue the rate of accrual of leave for employees first employed before July 1, 2013, at the same rate as under the current AS 39.20.200(a).

Section 5 of the bill would add a proposed new subsection (c) to AS 39.20.200 to establish that employees who are first employed on or after July 1, 2013, in a position for which leave may accrue, would be entitled to accrue leave at a certain rate based on the number of years of service. The rate of accrual for the new employees would be a lesser rate than for employees first employed before July 1, 2013, whose rate of accrual is established in sec. 4 of the bill.

Section 6 of the bill would amend AS 39.20.225(c) to increase the minimum amount of leave that must be taken by each officer or employee during a 12-month period from five days to 10 days. If the officer or employee does not take 10 days of leave, the difference between 10 days and the amount of leave taken would be canceled without pay unless the department or agency head certifies in writing that the officer or employee was denied the opportunity to take 10 days of leave during the 12-month period.

Section 7 of the bill would amend AS 39.20.240 to provide that, except as provided in AS 39.20.225(c) and AS 39.20.240, leave not taken by an officer or employee during a 12-month period would accumulate and be available for use in succeeding 12-month periods.

Section 8 of the bill would add proposed new subsections (b) - (e) to AS 39.20.240. Proposed new subsection (b) would provide that officers or employees may not accumulate more than 1,000 hours of leave at the end of each 12-month period for use in succeeding 12-month periods. Proposed new subsection (c) would provide that the personnel board may adopt regulations to permit exemptions from the 1,000 hour cap established under proposed new subsection (b) if the department or agency head certifies in writing that the officer or employee accumulated more than 1,000 hours of leave because the officer or employee was denied the opportunity to use leave during the 12-month period. Proposed new subsection (d) would provide that any officer or employee who has a leave balance in excess of 400 hours on December 16, 2013, would be exempt from the 1,000 hour leave cap established under new subsection (b) until their leave balance is reduced to 400 hours or less. Proposed new subsection (d) also would provide that the officer or employee must take at least 15 days of leave during each 12-month period. Similar to sec. 6 of the bill, which would establish a minimum amount of leave that must be taken over a 12-month period, proposed new subsection (e) would provide that officers or employees who are subject to proposed new subsection (d) because they have more than 400 hours of leave as of December 16, 2013, must take at least 15 days of leave over each 12-month period or they will have the difference between 15 days and the amount of leave taken canceled without pay unless the department or agency head certifies in writing that the officer or employee was denied the opportunity to take 15 days of leave during the 12-month period. Section 26 of the bill would provide that secs. 6 - 8 of the bill would take effect on December 16, 2013.

Section 9 of the bill would amend AS 39.25.110(14) to provide that petroleum engineers and petroleum geologists employed in a professional capacity by the Department of Natural Resources and by the Alaska Oil and Gas Conservation Commission are in the exempt service and thus would be exempt from the State Personnel Act unless otherwise provided by law.

Section 10 of the bill would repeal and reenact AS 39.27.011(a) to establish a revised salary schedule for classified and partially exempt employees in the executive branch of the state government who are not members of a collective bargaining unit and for employees of the legislature. The change in the salary schedule would reflect a one percent cost-of-living increase effective July 1, 2013.

Section 11 of the bill would amend AS 39.27.011(e) to provide that the salary schedule set out in sec. 10 of the bill would increase by one percent effective July 1, 2014.

Section 12 of the bill would amend AS 39.27.011(f) to provide that the salary schedule set out in sec. 10 of the bill, as increased in sec. 11 of the bill, would be increased by 2.5 percent effective July 1, 2015.

Provisions in secs. 10, 11, and 12 of the bill would provide that specific salary increases effective July 1, 2013, July 1, 2014, and July 1, 2015, are consistent with the cost-of-living increases negotiated in collective bargaining agreements covering the general government, confidential, and supervisory bargaining units.

Section 13 of the bill would amend AS 39.27.011(h) to provide that pay increments at the rate of 3.25 percent of an employee's base salary would be provided after an employee has remained in the final step within a range for two years and every two years thereafter if the employee's current annual performance rating is "good" or higher. This amendment would reflect a reduction in the pay increment rate which, under current AS 39.27.011(h), is at the rate of 3.75 percent and parallels recently negotiated collective bargaining unit decreases in the pay increment rate. Under sec. 27 of the bill, sec. 13 of the bill would take effect on July 1, 2015.

Section 14 of the bill would add a proposed new subsection (k) to AS 39.27.011 to provide that, notwithstanding subsections (a) - (j) of AS 39.27.011, the governor or a designee of the governor may authorize for a partially exempt service employee a higher pay rate than Step F. This authorization would be based on a written determination that the action serves a critical governmental interest of the state, the employee possesses exceptional qualifications, recruitment difficulties exist, or the action is necessary due to competitive salaries in the relevant labor market.

Section 15 of the bill would repeal and reenact AS 39.27.020 to establish new geographic pay differentials. Section 15 of the bill would authorize geographic pay differentials as a percentage above the basic salary schedule established in AS 39.27.011. Proposed new AS 39.27.020(a) lists duty stations for state employees throughout the state and identifies whether a geographic pay differential is authorized for that duty station, and if so, establishes the percentage differential for the duty station. The new geographic pay differentials established under sec. 15 of the bill would parallel the geographic pay differentials negotiated in state collective bargaining agreements. Additionally, the geographic pay differentials are based on a geographic cost-of-living study conducted for the Department of Administration under AS 39.27.030. Proposed new AS 39.27.020(b) provides that if an employee's duty station is not listed in subsection (a) and is not in a foreign country, the commissioner of the administration would by regulation establish the appropriate geographic pay differential and the regulations are not subject to the Administrative Procedure Act (AS 44.62). Proposed new AS 39.27.020(c) would provide that, for positions located in foreign countries, the commissioner of the administration would establish the geographic pay differentials, and that the differentials would be adjusted annually and maintain equity between salaries for positions in foreign countries and positions in the state.

Section 16 of the bill would repeal and reenact AS 39.27.030 to provide that the director of personnel, subject to appropriation, would conduct a survey at least every five years to review the geographic pay differentials established under sec. 15 of the bill, that the survey would address factors the director determines are relevant, and that the survey would reflect the cost of living for duty stations in the state or outside of the state by using Anchorage, Alaska as the base.

Section 17 of the bill would add a technical amendment to AS 39.35.675(d) that would use the term "geographic pay differential" in reference to AS 39.27.020 in accordance with the usage of that term in sec. 15 of the bill.

Section 18 of the bill would add a technical amendment to AS 44.31.020 to accurately reflect, that based on sec. 15 of the bill, AS 39.27.020 would identify duty stations for geographic differential purposes based on location rather than election districts.

Section 19 of the bill would repeal AS 22.35.010 because AS 22.35.010 previously addressed geographic pay differentials for supreme court justices, superior court judges, and district court judges, but secs. 1 - 3 of the bill would change those differentials and the differentials for those officials would be codified in AS 22.05.140(c), AS 22.10.190(c), and AS 22.15.220(d) (secs. 1 - 3 of the bill) respectively.

Section 19 of the bill also would repeal AS 39.27.045 because AS 39.27.045 states that the reference to "director" means the director of personnel for purposes of proposed new AS 39.27.020 - 39.27.030. AS 39.27.020, as amended by sec. 15 of the bill, no longer contains a reference to the director of the division of personnel, and AS 39.27.030, as amended by sec. 16 of the bill, expressly identifies the "director" as the director of the division of personnel.

Section 20 of the bill would amend the uncodified law of the state by adding a proposed new section providing for salary adjustments for certain exempt officers and employees of the executive branch. Section 20 of the bill would provide that employees, other than the governor and lieutenant governor, who are in the exempt service, including heads of principal departments of the executive branch, who are not members of a collective bargaining unit, would be entitled to receive the salary adjustments established under secs. 10, 11, and 12 of the bill. The adjustments are the cost-of-living increases provided to classified and partially exempt employees, who are not covered by collective bargaining agreements, of one percent effective July 1, 2013, one percent effective July 1, 2014, and 2.5 percent effective July 1, 2015.

Section 21 of the bill would amend the uncodified law of the state by adding a new section providing for salary adjustments for certain employees of the judicial branch. The salary adjustments provided for the eligible classified and partially exempt employees of the executive branch, as set out in secs. 10, 11, and 12 of the bill, apply to permanent and temporary employees and magistrates, other than justices and judges, who are not members of a collective bargaining unit and are not otherwise covered by AS 39.27.011(a).

Additionally, sec. 21 of the bill would provide that justices of the supreme court and judges of the court of appeals, the superior court, and the district court would be entitled to receive salary adjustments provided for in secs. 10, 11, and 12 of the bill, in accordance with existing statutory provisions AS 22.05.140(d), AS 22.07.090(c), AS 22.10.190(d), and AS 22.15.220(e).

Section 22 of the bill would amend the uncodified law of the state by adding a proposed new section providing that salary increases for certain employees of the University of Alaska, who are not members of a collective bargaining unit, would be provided in accordance with the compensation policy of the Board of Regents of the University of Alaska.

Section 23 of the bill would amend the uncodified law of the state by adding a new section that would provide that sec. 14 of the bill, which would authorize the governor or the governor's designee on a case-by-case basis to authorize higher pay than Step F for a partially exempt employee in the executive branch, would be applicable to a partially exempt employee hired before, on, or after the effective date of sec. 14 of the bill.

Section 24 of the bill would amend the uncodified law of the state by adding a new section addressing the transition of employees from the prior geographic pay differential rates to the new geographic pay differential rates, established under sec. 15 of the bill, in circumstances in which the rates are lowered for a duty station. This provision is similar to the transition provisions negotiated for collective bargaining units. In particular, subsection (a) provides that affected employees would not have their pay reduced as a result of the changes in geographic pay rates but instead, if their pay would otherwise be reduced as a result of sec. 15 of the bill, their pay would be frozen until other pay increases accumulate to the point that their salary would equal or exceed the frozen rate. Thus, it would provide that a state employee, including a justice or judge, who is employed on the effective date of sec. 15 of the bill, would not have their pay lowered as a result of the changes in the geographic pay differentials provided by sec. 15 of the bill. However, employees affected by this change in geographic pay differentials also would not have their pay raised so long as they remain at the job and duty station that they were employed in on the effective date of sec. 15 of the bill, unless the employee is entitled to a pay raise regardless of the changes in sec. 15 of the bill. Accordingly, employees in this position would have their pay frozen until other increases, such as cost-of-living increases or pay increments, have increased the salary assigned to their range and step to the point that it would exceed the salary that they have been receiving based on the prior geographic pay differentials. Subsection (b) addresses circumstances in which an employee is demoted either voluntarily or for cause. In those circumstances, the changes in geographic pay differentials provided under sec. 15 of the bill would not apply to the pay of the employee whose pay is already being reduced as a result of a demotion and thus those employees would continue to receive the prior geographic differential on their reduced pay as long as they remain at the job and duty station that they were employed in on the effective date of sec. 15 of the bill. Subsection (c) addresses circumstances in which the pay for a position of an employee would be lowered as a result of the reclassification of a position. Employees in this situation would be subject to subsection (a) and thus, if they were employed in a position with a geographic pay differential that would be lowered as a result of sec. 15 of the bill, they would retain their prior geographic pay differential so long as they remain at the job and duty station that they were employed in on the effective date of sec. 15 of the bill.

Section 25 of the bill would amend the uncodified law of the state by adding a proposed new section would provide that the commissioner of administration or the personnel board may immediately adopt regulations necessary to implement the changes made by the bill. The regulations would not be subject to AS 44.62 (Administrative Procedure Act), which is customary as such regulations would be dealing with the internal operations of state government. The regulations would take effect after the effective date of the law implementing the regulation.

Section 26 of the bill would provide that secs. 6 - 8 of the bill, which address changes in leave accrual and certain increases to the minimum amount of leave that must be taken by state employees, would take effect on December 16, 2013.

Section 27 of the bill would provide that sec. 13 of the bill, which reduces pay increments from 3.75 percent of an employee's base salary to 3.25 percent, would take effect on July 1, 2015.

Section 28 of the bill would provide that sec. 25 of the bill, which would authorize the commissioner of administration or the personnel board to immediately adopt regulations, would take effect immediately under AS 01.10.070(c).

Section 29 of the bill would provide that, except as provided in secs. 26 - 28 of the bill, the bill would take effect July 1, 2013.

Conclusion

The bill would provide for compensation and leave for employees in the executive, legislative, and judicial branches of state government, who are not covered by collective bargaining agreements, in a manner consistent with compensation and benefits negotiated for employees in collective bargaining units. The bill would revise the salary schedule for those employees to grant cost-of-living increases consistent with the increases that have been negotiated for employees in the general government, confidential employee, and supervisory bargaining units. The bill also would provide for a reduction in the pay increments provided to eligible employees based on longevity in state service from the current rate of 3.75 percent every two years to a new rate of 3.25 percent, a reduction in leave accrual for new employees as well as increases in required leave usage by employees, and changes in the geographical pay differentials provided to employees based on the location of their duty stations. The changes are consistent with terms negotiated for collective bargaining represented employees. The bill also would address compensation for other employees who are not members of a collective bargaining unit, including exempt officers and employees of the executive branch, judges and employees of the judicial branch, and employees of the University of Alaska.

The bill presents no constitutional or other legal concerns.

Sincerely,

Michael C. Geraghty
Attorney General

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