Representative Sam Kito

Alaska State Legislature

House District 33

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February 28, 2018

Committee on Labor and Commerce
Alaska House of Representatives
Alaska Legislature

Re: 2018 Alaska State Officers Compensation Commission
House Bill 309

Dear Committee Members:

As a result of the recommendation submitted to the Legislature by the Alaska State Compensation Commission (ASOCC), I have spent a considerable amount of time and effort reviewing the statutes and past reports, and have come up with this report as my analysis regarding the 2018 ASOCC recommendations supported by the attached exhibits, and presented here as supporting documentation for the Committee Substitute for House Bill 309, rejecting the recommendations of the 2017 amended ASOCC report.

The current ASOCC met initially on October 25, 2017 and released their Preliminary Findings and Recommendations report on November 14, 2017. The ASOCC recommendations from the preliminary report proposed the "salaries of the legislature be reduced by 10%" and recommended that the "legislature follow the State of Alaska per diem, travel and lodging rates as found in the Alaska Administrative Manual." The report did not provide supporting documentation for the recommendations provided in the preliminary report, and the only discussion point made in the preliminary report was that "Due to budget constraints, various groups within the State of Alaska are seeing reductions in areas such as wages and the Permanent Fund Dividend." The report goes on to state that the wages should "…reflect some reduction to be in line with reductions found elsewhere and to assist in overall budget reductions." The report provided no evidence that there indeed were "…reductions found elsewhere..." and the net savings were so small as to be inconsequential with respect to the overall budgeting process. In regard to executive branch compensation, the preliminary report only included a statement that "With regards to the Governors, Lieutenant Governor and executive salaries, the commission decided to not make any recommendations." This despite one of the primary goals of the ASOCC being "…to assist in overall budget reductions."

After a review of the preliminary report, I sent an email to the Governor expressing my concerns over the equitability of the recommendations that were being proposed, along with my concern that the "… decision will not provide equitable compensation, and therefore, will be a violation of state law." [Exhibit A1] [AS 39.23.580]. As a curiosity, I also requested a legal memo addressing the ASOCC authority to make per diem change recommendations where I learned that the ASOCC does have the ability to propose per diem, and other compensation changes [Exhibit A2]. This conclusion was also confirmed in an email received from Department of Administration Commissioner Leslie Ridle [Exhibit A3]. Of note, as a policy call the ASOCC report from 2009 [Exhibit B1] deferred recommendations regarding "Session per diem, travel expenses, moving allowances, and office expense accounts…", and clearly stated that those "…shall not be considered compensation. (AS 24.10.100)", also providing that "The Legislative Council shall set the amount and rules governing moving expense and per diem allowances. (AS 24.10.130)".

The ASOCC released their amended preliminary findings on December 21, 2017 [Exhibit B3]. The amended report postponed the salary reduction recommendation to January 1, 2019, which raises the question as to what advice the ASOCC was given regarding their statutory obligations as statute clearly provides that the recommendations for legislators have "…the force of law and becomes effective on the first day of the next regular legislative session..." [AS 39.23.540(d)(1)]. The amended report also modified the per diem recommendation stating that "…the legislature continue to pay the federal per diem rates; however, per diem cannot be taken when a legislator is within 50 miles of his/her primary residence."

According to statute [AS 39.23.540(d)], the ASOCC shall make their report available to the governor and legislature "during the first 10 days of a legislative session". The ASOCC solicited public comment regarding their amended report by January 9, 2018. I responded to the request for public comment by submitting a letter expressing my concerns [Exhibit A4]. Based on the analysis provided to the ASOCC in that letter and another letter submitted by Bruce Bothelo, the ASOCC reconsidered their recommendations, and issued a final report that removed the salary reduction recommendation. However, the ASOCC left one recommendation in their final report, and that was the recommendation to eliminate per diem for legislators residing more than 50 miles from their primary residence [Exhibit B4].

The basis of my concern over the equitability of the single remaining recommendation provided by the ASOCC in their final report is as follows:

1) The proposed recommendation will result in a reduction of compensation for Juneau legislators during the regular legislative session in the amount of approximately $18,500 that Juneau legislators receive as taxable compensation.
2) The legislators residing more than 50 miles from Juneau will continue to receive non-taxable per diem payments during regular session in an amount of $24,750. It does not cost $24,750 for a non-Juneau legislator to pay for housing and food for three months work in Juneau (an amount equating to $8,020 per month.) The chart provided as Exhibit C2 graphically depicts the difference between the current compensation and the ASOCC recommended change.

3) As an extension of the discussion provided under 2), in a year with a regular session, extended session and three full special sessions, the difference in compensation between Juneau and non-Juneau legislators could grow to $60,000 that non-Juneau legislators would continue to receive tax-free. Again, it does not cost a non-Juneau legislator $60,000 to pay for food and lodging for the seven months of session described under this scenario.

When I completed my additional analysis regarding the monetary difference that would result with implementation of the ASOCC recommendations, I sent a follow up email to Commissioner Ridle restating my concern over equitable compensation [Exhibit A5] and was informed that the ASOCC existed under the authority of the Department of Administration for budgetary purposes only, but that the department also provides secretarial support to the ASOCC [Exhibit A6]. Upon receipt of the response from Commissioner Ridle, I forwarded the email to the ASOCC chair, Mr. Glenn Clary [Exhibit A7], and have yet to receive a response to that email.

The compensation recommendation provided by the ASOCC is clearly not equitable, and therefore constitutes a violation of state law. I have requested a legal opinion from legislative legal services asking if the ASOCC is not under the administrative jurisdiction of the Department of Administration, who is obligated to provide oversight and assurance that statutory provisions are met? If the only check to the ASOCC authority is a legislative rejection of the ASOCC recommendation, then I have a very strong concern that the ASOCC is operating outside of state law, and that their activities, and hence their recommendations are unconstitutional. That question has yet to be answered but will be provided as soon as it is available.

Concerns regarding the equitability and the legal basis of the ASOCC, resulted in my effort to identify a more equitable means by which to establish compensation for Alaska's legislators. To that end, I performed a sensitivity analysis comparing several compensation alternatives that would result in moderate to substantial cost savings [Exhibit C1].

All the options described below were compared to current compensation. Each option is further described as follows, and can be found graphically in Exhibit C3:

A. Reduce annual legislative salary to $42,000 and institute a per day session stipend of $180 that decreases to $150 during extended session, $50 during the first special session, $30 during the second special session, $10 during the third special session, and no meeting stipend for special sessions beyond three. This option maintains the federal per diem rate for non-Juneau legislators, but modifies it to the long-term rate of $171.5-182.5 for regular and extended session but maintains the short term per diem rate for non-Juneau Legislators of $189 for special sessions. Overall savings for regular session is approximately $118,600, but the regular session difference between Juneau and non-Juneau legislators is more than $15,400, which is still a large disparity, and due to the use of the federal per diem rate, this option can result in an increase in legislative costs of almost $50,000 over current rates for the scenario that includes three full special sessions in a year.

B. Reduce annual legislative salary to $40,200 and institute a per day session stipend of $300 that decreases to $150 during extended session, $50 during the first special session, $30 during the second special session, $10 during the third special session, and no meeting stipend for special sessions beyond three. This option proposes using the state per diem rate that currently amounts to $78 per day, and results in a small but equitable decrease in compensation for all legislators, and a savings of $58,300 for a 90-day session, with savings that can increase to over $1.1 million for years with three full special sessions. This option utilizes a higher stipend than found under Option A for a 90-day session but decreases the stipend in the same manner as Option A resulting in an increase of savings over the current compensation method. This stepping down of the stipend is designed to provide a disincentive to extended and special sessions by decreasing the daily stipend significantly beyond 90-days, while still providing a per diem rate that will adequately provide for food and lodging.

C. Reduce annual legislative salary to $30,000 and institute a per day session stipend of $300 that decreases to $150 during extended session, $50 during the first special session, $30 during the second special session, $10 during the third special session and no meeting stipend for special sessions beyond three. This includes the same per diem rate ($78) for non-Juneau legislators, but decreases compensation and is provided only as a proof of concept that the compensation method described in Option B is scalable, and results in equitable compensation for Juneau and non-Juneau legislators. This option has a greater savings in the 90-day and extended session options, but the savings is less pronounced for the scenario where there are three full special sessions in a year because of the effect of per diem, even at the $78 level, for those special sessions.

D. Increase salary to $70,000 and allow for state per diem in an amount of $78 per day for non-Juneau legislators. This option is moving in to consideration of compensation for a full-time legislature, where everyone receives the same salary of $70,000, and the non-Juneau legislators receive per diem at the state rate (currently $78). This option costs an additional $109,000 for a 90-day session but results in savings over current compensation of $260,000 for an extended session and can result in savings of $1.4 million in a year that includes three full special sessions. The major difference between this option and Option B is that under Option B, there is a designed disincentive to extend legislative work beyond 90-days, and this option does not provide a disincentive to additional special sessions.

I have also compared the ASOCC recommendation to current compensation and determined that under the three scenarios provided for each option above, the ASOCC recommendation will save approximately $55,600 for a regular 90-day session, an additional $19,200 in a 120-day extended session, and only an additional $4,050 in a year with three full special sessions. A chart comparing all the options with current compensation is attached as Exhibit C4.

Based on the analysis provided above, I have drafted a Committee Substitute [Exhibit D1] that implements Option B as the most equitable compensation solution for the legislature. This option provides savings to the state that is slightly higher than the savings provided by the ASOCC for the 90-session, but also provides increasing savings amounting to over $1,100,000 in the case where there are three full special sessions in a single year. As stated in the analysis above, this option also provides a decreasing per day amount that is designed to provide a disincentive to extended and special sessions by decreasing the per day amount significantly when session extends beyond the statutory 90-days. The CS also removes legislative compensation from the prevue of the ASOCC as the analysis provided above clearly shows that ASOCC is not complying with Alaska Statute, and not operating in the best interests of the state.

I encourage member of the Labor and Commerce Committee to consider this report and supplemental information and consider moving CS for House Bill 309 from committee.

Sincerely,

Representative Sam Kito III
House District 33

cc:

Representative Bryce Edgmon, Speaker of the House
Senator Pete Kelly, President of the Senate