

A Exhibits

- A1 - Email to Gov. Walker re Pending Compensation Commission report 12/18/17
- A2 - SOCC Legal Memo 12/21/17
- A3 - Comm Ridle Response re Comp Commission 12/26/17
- A4 - Letter to Compensation Commission 1/8/18
- A5 - Email to Comm Ridle re Compensation Commission Decision 2/21/18
- A6 - Commissioner Ridle Response re Compensation Commission Decision 2/22/18
- A7 - Email to Clary re Compensation Commission Decision 2/23/18

Exhibit A1

From: [Rep. Sam Kito](#)
To: [Governor Bill Walker](#)
Cc: ["Peterson, Darwin R \(GOV\)"](#); [Rep. Bryce Edgmon](#); [Crystal Koeneman](#); ["leslie.ridle@alaska.gov"](#); [Sen. Dennis Egan](#); [Rep. Justin Parish](#)
Bcc: [Heidi Drygas \(Heidi.Drygas@alaska.gov\)](#)
Subject: Pending Compensation Commission report
Date: Monday, December 18, 2017 1:02:00 PM

Dear Governor Walker:

I am sending this email in response to the pending final report of the State Officers Compensation Commission. Alaska statute states that it is the policy of the Legislature to "recommend an equitable rate and form of compensation, benefits, and allowances for legislators." Based on the information available from the press regarding the upcoming report, it is apparent to me that the decision will not provide equitable compensation, and therefore, will be a violation of state law.

The original purpose of the compensation commission was to take politics out of the decision making for salary and benefits for the Governor, Lt. Governor and Legislators. To make a decision that makes a recommendation that is not based on a review of compensation, benefits or per diem provided in other states, or a recognition of the differing cost of living and transportation specific to Alaska, is short sighted and appears to be a decision based on political outcomes as opposed to non-political review of appropriateness of compensation.

It is especially troubling that the changes proposed by the salary commission have an inordinate effect on legislators that live in the Capitol City, and would not have a similar effect on other legislators in the state.

Therefore, I recommend that the Governor request the commission review its decision and reconsider it based on the fact that making a purely political decision is not in the best interests of the state.

Sincerely,

Sam Kito III
Representative
House District 33

Sec. 39.23.580. Policy of the legislature. It is the policy of the legislature that the commission recommend an equitable rate and form of compensation, benefits, and allowances for legislators.

LEGAL SERVICES

Exhibit A2

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

December 21, 2017

SUBJECT: Alaska State Officers Compensation Commission authority to adjust legislator per diem (Work Order No. 30-LS1200)

TO: Representative Sam Kito
Attn: Crystal Koeneck

FROM: Dan Wayne
Legislative Counsel



Question Presented

You asked whether the Alaska State Officers Compensation Commission (ASOCC) has the statutory authority to adjust legislator per diem rates that have been adopted by the Alaska Legislative Council.

Brief Answer

The ASOCC is authorized to make findings and recommendations regarding per diem for legislators. Although ASOCC does not directly set or change the legislative per diem allowance policy adopted by the Alaska Legislative Council, once ASOCC makes its recommendations final after public comment, the recommendations have the force of law under AS 39.23.540(d) unless a bill disapproving all the recommendations made under AS 39.23.540 is enacted into law within 60 days after the recommendations are submitted or the legislature fails to appropriate enough money to fully fund all of the commission's recommended increases.

Discussion

Article II, sec. 7, Constitution of the State of Alaska, provides:

SECTION 7. Salary and Expenses. Legislators shall receive annual salaries. They may receive a per diem allowance for expenses while in session and are entitled to travel expenses going to and from sessions. Presiding officers may receive additional compensation.

In order to establish the required salaries for legislators and the discretionary per diem allowance that legislators may receive, AS 39.23.540 provides:

Sec. 39.23.540. Duties of the commission.

(a) The commission shall review the *salaries, benefits, and allowances* of members of the legislature, the governor, the lieutenant

governor, and each principal executive department head and prepare a report on its findings at least once every two years, but not more frequently than every year. The commission shall notify the legislature that the report is available.

(b) The commission may request reports or studies from any state agency as to the rate and form of compensation, benefits, and allowances for legislators, the governor, the lieutenant governor, and each executive department head. A state agency from which a report or a study is requested shall furnish it within a period of time prescribed by the commission.

(c) By November 15, the commission shall prepare its preliminary findings and recommendations for compensation of state officers that is reasonable and equitable. The commission shall give reasonable public notice of its preliminary findings and recommendations, solicit public comments, and give due regard to the public comments, before submitting a final report under (d) of this section.

(d) The commission shall make available to the governor and presiding officers of each house of the legislature a final report of its findings and recommendations as to the rate and form of compensation, benefits, and allowances for legislators, the governor, the lieutenant governor, and each principal executive department head during the first 10 days of a legislative session. *Subject to (g) of this section and unless a bill disapproving all the recommendations for all officers listed in this section is enacted into law within 60 days after the recommendations are submitted to the governor and presiding officers of each house of the legislature, a recommendation as to the compensation, benefits, and allowances for*

(1) a legislator has the force of law and becomes effective on the first day of the next regular legislative session; and

(2) the governor, the lieutenant governor, and each principal executive department head has the force of law and becomes effective on the first day of the fiscal year following the fiscal year in which the recommendation is submitted.

(e) The commission may prepare amendments to the report submitted under (d) of this section and notify the legislature that the amendments are available.

(f) A commission member who does not concur in the proposed or final recommendations may attach written objections to the commission's report of its findings and recommendations.

(g) A recommendation under this section increasing the compensation, benefits, and allowances of a public officer is not effective unless all recommended increases included in the final report under (d) of this section are fully funded by appropriations.¹

¹ Emphasis added.

The legislature's use of the phrase "compensation, benefits, and allowances," in my opinion, includes per diem allowances for legislators. This reading is supported by the legislature's 2008 amendment of the statutory provision that requires the Alaska Legislative Council to adopt a per diem allowance policy. In 2008, when the 25th Legislature repealed AS 37.23.200 - 39.23.270 and AS 39.23.400 and enacted AS 39.23.500 - 599, it amended AS 24.10.130(c) to include the language "in accordance with AS 39.23.540(d)":

(c) The Alaska Legislative Council shall adopt a policy *in accordance with AS 39.23.540(d) regarding reimbursement for moving expenses applicable to all legislators and an applicable per diem allowance policy.* The policy must set conditions for the reimbursement for moving expenses and payment of per diem and prescribe the amounts of reimbursement adapted to the special needs of the legislative branch as determined by the council.^[2]

Despite this broad authority, the ASOCC deferred to the Alaska Legislative Council to regulate "long-term per diem" after recommending its elimination when the ASOCC issued its first ever Findings and Recommendations on January 10, 2009.³ At that time, the ASOCC concluded:

While the commission recommends the elimination of the long-term per diem stipend, it also specifies that payments for living expenses during session, reimbursable expenses for legislative travel during and between sessions, relocation allowances, and office expense accounts shall not be considered a form of compensation and that the Legislative Council shall continue to regulate these payments.

In ASOCC's November 14, 2017, Preliminary Findings and Recommendations,⁴ ASOCC reversed its decision in 2009 to defer to the Legislative Council on per diem allowances by including in its findings and recommendations, a recommendation regarding per diem for legislators. Specifically, ASOCC proposed "that the legislature follow the State of Alaska per diem, travel and lodging rates as found in the Alaska Administrative Manual." While ASOCC's reversal of its 2009 approach likely surprised legislators, it is my opinion based on the plain language of AS 39.23.540, that the commission continues to have the authority to set per diem for legislators, subject to possible rejection by the

² Emphasis added. See ch. 21, SLA 2008 (SCS CSHB 417(FIN)).

³ Available online at: <http://doa.alaska.gov/dop/socc/2009archive>

⁴ Available online at: <http://doa.alaska.gov/dop/fileadmin/socc/pdf/2017/PreliminaryFindingsandRecommendations2017.pdf>

Representative Sam Kito
December 21, 2017
Page 4

legislature, under AS 39.23.540(d). At its December 5, 2017, meeting, ASOCC apparently altered its recommendation for per diem allowances by recommending that the rate remain unchanged but prohibiting legislators from collecting per diem while within 50 miles of their primary residence.⁵

As of the writing of this memorandum, ASOCC's Final Findings and Recommendations are not available. If the legislature is satisfied with ASOCC's Final Findings and Recommendations once they are submitted to the legislature and other affected parties as provided in AS 39.23.540(d), the legislature does not need to act any further other than to fund the recommendations in the operating budget.

However, if the legislature does not agree with ASOCC's Final Findings and Recommendations, the legislature can reject them under AS 39.23.540(d). To comply with the language in AS 39.23.540(d), allowing rejection of ASOCC recommendations, a bill must be enacted into law within 60 days disapproving of "all the recommendations for all officers listed" in AS 39.23.540.

If you have further questions, please advise.

DDG:dls
17-612.dls

⁵ See Nathaniel Herz, "State commission reverses plan to slash Alaska legislators' expense checks," Anchorage Daily News, Dec. 5, 2017, <http://www.adn.com/politics/alaska-legislature/2017/12/05/state-commission-reverses-plan-to-slash-alaska-legislators-expense-checks/>; Pat Forgey, "Commission delays cutting legislator pay until after elections," Juneau Empire, Dec. 7, 2017, <http://www.juneauempire.com/state/news/2017-12-06/commission-delays-cutting-legislator-pay-until-after-elections>. ASOCC's revised Preliminary Findings and Recommendations are not available on ASOCC's website.

Exhibit A3

Rep. Sam Kito

From: Ridle, Leslie D (DOA) <leslie.ridle@alaska.gov>
Sent: Tuesday, December 26, 2017 12:17 PM
To: Rep. Sam Kito
Cc: Peterson, Darwin R (GOV); Montalbo, Minta C (DOA); Gorle, Nicole A (GOV); Kendall, Ryan S (DOA); Sheehan, Kate E (DOA)
Subject: FW: 2009 commission report
Attachments: 2009 Compensation Commission Report.pdf

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Hi Rep. Kito

Thanks for sending a copy of the 2009 recommendations. I had Kate Sheehan and our Department of Law review the issue again. The highlighted portion you sent concerned the recommendations made in 2009; however, that does not change the law that the SOCC may make recommendations regarding allowances such as per diem any time they meet.

In AS 24.10.130, you will see that the Legislative Council sets the policy for per diem in accordance with the SOCC recommendations. It is true that the SOCC has not made any recommendations on per diem since 2009 but part of the rationale for having the commission is to revisit issues every one or two years. This current commission has chosen to address the per diem issue and final recommendations will be sent to the legislature according to the statutory timelines.

The recourse for rejecting the Commission's recommendations is the passage of disapproving legislation. There are no statutory provisions creating an avenue for the executive branch to intervene prior to any action by the legislative branch.

If you have any other questions on the work of the commission, please let me know.

Thank you,
Leslie

Leslie Ridle
Commissioner
Department of Administration
907-465-2200

From: Rep. Sam Kito [mailto:Rep.Sam.Kito@akleg.gov]
Sent: Tuesday, December 19, 2017 1:37 PM
To: Ridle, Leslie D (DOA) <leslie.ridle@alaska.gov>
Subject: 2009 commission report



Representative Sam Kito III

Alaska State Legislature

January 8, 2018

Glenn Clary, Chair
Alaska State Officers Compensation Commission
State of Alaska
Department of Administration
P.O. Box 110200
Juneau, AK 99811-0200

Dear Mr. Clary:

This correspondence is being transmitted in response to the notice for public comments requested for January 9, 2018, solicited by the Alaska State Officers Compensation Commission [hereinafter referred to as the Commission].

A review of the "Preliminary Findings and Recommendations" [hereinafter referred to as the Report], and the "Amended Preliminary Findings and Recommendations" [hereinafter referred to as the Amended Report] raises questions regarding the process and goals of the recommendations proposed by the Commission.

The current iteration of the Commission was created through legislation [House Bill 260 from the 25th Alaska Legislature]. The stated goal of the legislation as presented by the bill sponsor in the House State Affairs Committee hearing that took place on January 17, 2008, was as follows:

House State Affairs Committee meeting 1-17-2008 [emphasis added]:

REPRESENTATIVE DOOGAN said he does not think people run for the legislature because they want to get rich, or become commissioners because they cannot make money someplace else. He stated his *intent is to keep the compensation from being a barrier*.

REPRESENTATIVE COGHILL *concurred*. He said the commission would be tasked to look at equitable rate, so the word equitable is a huge issue. He said he thinks "this public record" will help the commission to find some direction in that regard. He added, "Because otherwise they have to look at what probably could be termed competitive rates rather than equitable rates."

REPRESENTATIVE DOOGAN reiterated his aforementioned point regarding *removing the barrier to public service*.

Mr. Glenn Cleary, Chair

January 8, 2018

Page 2

This sentiment was further expressed during the House Finance Committee hearing that took place on January 30, 2008, where Representative Nelson noted “... that it is wrong to have more rich and retired people doing the work for the State and that it is better for the legislative body to have more variety in who serves.”

Representative Nelson’s sentiment was greeted with concurrence from the bill sponsor Representative Doogan who stated that he “wholeheartedly agreed. He added that many people are kept from public office because of their obligations in life versus the compensation offered.”

The Commission, in its Report and Amended Report, recommends that legislator salaries be reduced by 10%, and that “per diem continue to be paid based on the federal rate, however, legislators would not be eligible for per diem if the session was being held within 50 miles of their primary residence.”

The reasoning provided by the Commission for making its recommendations is contained in the following statement, and only in the following statement, included in the original Report:

“Due to budget constraints, various groups within the State of Alaska are seeing reductions in areas such as wages and the Permanent Fund Dividend. While many legislators do spend more time serving the public than the 90-day session, it is important that their wages reflect some reduction to be in line with reductions found elsewhere and to assist in overall budget reductions.”

Without evidence or backup, this statement is left to stand alone, and can only be interpreted as the opinion of the Commission, and not as a deliberative statement.

The actions of the Commission are precisely contrary to the original intent of the legislation to “... keep compensation from being a barrier” to public service. Decreasing the salaries of all legislators, and eliminating per diem for some legislators, will only result in fewer Alaskans being willing to put their names forward to serve their fellow Alaskans in the state legislature.

In the Report, the Commission claims that “various groups within the State of Alaska are seeing reductions in ... wages”, and that the Commission’s proposed reduction should “be in line with reductions found elsewhere”. The 10% wage reduction proposed by the Commission was offered as a reflection of “reductions found elsewhere”, however, the Report or Amended Report fail to provide evidence that other industries have experienced wage reductions approximating 10%. In fact, the Governor, Lt. Governor, and each principal executive department head, who are also under the purview of the Commission, have not seen reductions in wages or benefits¹. Further, the Report states: “With Regards to the Governors, Lieutenant Governor and executive salaries, the commission decided to not make any recommendations.” This statement is provided without explanation, background or evidence, and can only be interpreted as favoritism towards the Governor and Administration given the stated goal of the Commission to “... assist in overall budget reductions.”

¹ Non-department head employees of the State of Alaska have not experienced reductions in wages or benefits either. However, State of Alaska employees have not seen wage increases due to the Governor freezing merit and step increases.

Mr. Glenn Cleary, Chair

January 8, 2018

Page 3

Legislators only receive changes in salary which are proposed by the Commission and not rejected by the legislature. Increases to legislative wages have not been proposed by the Commission since its original report in 2009, which fundamentally changed the way legislators are paid. Legislators do not receive annual merit, step or cost of living increases, so legislators' wages have been held at the same level since 2009, which cannot be said for any state employee, appointed or not. I would also argue that no other industry in Alaska stopped increasing wages since 2009.

The Commission also claims that "... various groups within the State of Alaska are seeing reductions in ... the Permanent Fund Dividend". The Permanent Fund Dividend reduction was experienced by all Alaskans, including legislators, and not just "some groups". As such, a reduction to wages and per diem for legislators adds an additional reduction to legislators' income.

The per diem reduction recommended by the Commission was also provided without the benefit of evidence or backup. A review of the meeting minutes for House Bill 260 from the Senate State Affairs Committee on February 26, 2008, found that an amendment was offered by Senator Bunde as Amendment #1 that included the following provision:

Page 2, line 4, following "allowance":

Insert "except that those whose place of permanent residence is within 50 miles of a location in which the legislature is convened in regular or special session are not entitled to a per diem allowance for that session"

The amendment failed on a bipartisan vote of 2-3. Because the legislature considered and failed to adopt the above provision, the legislative intent on the issue of differential per diem is clear; the Commission does not have the authority to apply a differential per diem rate to legislators.²

Far from removing politics from the wage and benefit discussion for legislators and other state officials, the actions of the Commission, through its Report and Amended Report, provide purely political recommendations that do not fiscally impact the Governor, Lt. Governor or any principal department head, but does put fiscal pressure on all legislators, some more than others.

I hereby request that the Report and Amended Report of the Commission be withdrawn as incomplete.

Sincerely,



Sam Kito III, P.E.

Representative District 33

cc: Governor Bill Walker
Lt. Governor Byron Mallott
Commissioner Leslie Ridle, Department of Administration

² The original 2009 report aligns with this part of the legislative record in that it recommends "... payments for living expenses during session, reimbursable expenses for legislative travel during and between session, relocation allowances, and office expense accounts shall not be considered a form of compensation and that the Legislative Council shall continue to regulate these payments."

Exhibit A5

From: [Rep. Sam Kito](#)
To: ["Ridle, Leslie D \(DOA\)"](#)
Cc: ["Peterson, Darwin R \(GOV\)"](#); [Rep. Bryce Edgmon](#); [Rep. David Guttenberg](#)
Bcc: [Crystal Koeneman](#)
Subject: Compensation Commission Decision
Date: Wednesday, February 21, 2018 2:39:00 PM
Attachments: [Compensation Commission.pdf](#)

Dear Commissioner Ridle,

In a further review and analysis of the Compensation Commission's proposed recommendation, I have compared the costs between the current system of legislative compensation and the commission's proposed recommendation. The attached chart graphically shows that difference.

If you will look at the chart, during a regular session, Juneau legislator compensation will be reduced by \$18,500, and non-Juneau Legislators will still receive per diem in the amount of \$24,750. This change will result in a regular session compensation difference between Juneau and other legislators of \$24,750. It is not reasonable to think that it costs a non-Juneau legislator \$24,750 to relocate to Juneau for 3 months. Over a full year with an extended, and three special sessions, that compensation *difference* can grow to nearly \$60,000. Again, and even more to the point, in is not reasonable to think that it costs a non-Juneau legislator \$60,000 to pay for food and lodging to relocate for 7 months of work.

According to AS 39.23.580 "It is the policy of the legislature that the commission recommend an equitable rate and form of compensation, benefits, and allowances for legislators." It is obvious to me that the compensation commission has not met their statutory obligation in recommending "an equitable rate" of compensation, and I respectfully request that the Department inform the Compensation Commission that, because they have not met their statutory obligation, that they therefore must remove their recommended change.

Sincerely,

Representative Sam Kito III
State Capitol
Juneau Alaska 99801
(907) 465-4766

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Exhibit A6

From: Ridle, Leslie D (DOA)
To: [Rep. Sam Kito](#)
Cc: [Peterson, Darwin R \(GOV\)](#); [Rep. Bryce Edgmon](#); [Rep. David Guttenberg](#)
Subject: RE: Compensation Commission Decision
Date: Thursday, February 22, 2018 5:21:45 PM

Representative Kito:

Thank you for your email and the chart. I agree with the fact that the SOCC's actions disproportionately affect Juneau legislators over other legislators, and I understand how this could be a hardship for members of the Juneau Delegation. However, I consulted with the Department of Law again, and I confirmed I don't have the authority to direct the SOCC to change their recommendations.

As you know, [HB 417](#) passed in 2008 to create the SOCC and it contained the following:

[AS 39.23.500\(e\)](#)--the SOCC is in DOA for budgetary purposes and we provide a secretary to the committee, but DOA does not control the SOCC.

[AS 39.23.540](#)--the SOCC has been assigned certain statutory duties including most specifically preparing a report that includes recommendations regarding salaries for the governor, Lt. governor, legislators, and department heads.

[AS 39.23.540\(d\)](#)--the SOCC submits its report to the legislature which then has the authority to pass a bill disapproving the recommendations.

There is nothing in the statutes giving DOA or me "veto" authority over the SOCC's recommendations. Per the statute, only legislature can disapprove SOCC recommendations if it so chooses.

I know this isn't the answer you were looking for. I can forward your email and your chart to the chair of the SOCC if you like. If you prefer to send something on your own, the chair is Glenn Clary and his email is gclary@ancbt.org.

Member Duane Bannock's term is over March 1. I have communicated to Rep. Edgmon's office there will be a vacancy so the House can appoint a new member after March 1.

Thank you,
Leslie

From: Rep. Sam Kito [<mailto:Rep.Sam.Kito@akleg.gov>]
Sent: Wednesday, February 21, 2018 2:39 PM
To: Ridle, Leslie D (DOA) <leslie.ridle@alaska.gov>
Cc: Peterson, Darwin R (GOV) <darwin.peterson@alaska.gov>; Rep. Bryce Edgmon <Rep.Bryce.Edgmon@akleg.gov>; Rep. David Guttenberg <Rep.David.Guttenberg@akleg.gov>
Subject: Compensation Commission Decision

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According to AS 39.23.580 "It is the policy of the legislature that the commission recommend an equitable rate and form of compensation, benefits, and allowances for legislators." It is obvious to me that the compensation commission has not met their statutory obligation in recommending "an equitable rate" of compensation, and I respectfully request that the Department inform the Compensation Commission that, because they have not met their statutory obligation, that they therefore must remove their recommended change.

Sincerely,

Representative Sam Kito III
State Capitol
Juneau Alaska 99801
(907) 465-4766

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Exhibit A7

From: [Rep. Sam Kito](#)
To: ["gclary@ancbt.org"](mailto:gclary@ancbt.org)
Cc: [Rep. Bryce Edgmon](#); ["Ridle, Leslie D \(DOA\)"](#); [Rep. David Guttenberg](#); ["Peterson, Darwin R \(GOV\)"](#)
Bcc: [Crystal Koeneman](#)
Subject: FW: Compensation Commission Decision
Date: Friday, February 23, 2018 1:48:00 PM
Attachments: [Ex 9-Compensation Commission Chart.pdf](#)

Dear Mr. Clary,

This email is being transmitted to you as a follow up to the email below that I sent to the Department of Administration, and the attached chart identifying the compensation difference under the Alaska Salary Compensation Commission recommendations submitted to the Alaska Legislature earlier this session.

I have recently spent additional time reviewing the request, and the impact of that request on Juneau Legislators. Please review the attached chart that identifies the monetary effect of the ASOCC recommendation.

According to Alaska Statute 39.23.580 "It is the policy of the legislature that the commission recommend an equitable rate and form of compensation, benefits, and allowances for legislators." It is obvious to me that the ASOCC has not met their statutory obligation in recommending "an equitable rate" of compensation, and I respectfully request that the ASOCC, because they have not met their statutory obligation, retract the recommended change. The decision by the ASOCC is not in the publics best interest, does not meet the ASOCC statutory obligations, and will negatively impact the ability for the Juneau legislative district to attract qualified candidates for legislative office.

Sincerely,

Representative Sam Kito III
State Capitol
Juneau Alaska 99801
(907) 465-4766

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From: Ridle, Leslie D (DOA) [mailto:leslie.ridle@alaska.gov]
Sent: Thursday, February 22, 2018 5:22 PM

To: Rep. Sam Kito <Rep.Sam.Kito@akleg.gov>
Cc: Peterson, Darwin R (GOV) <darwin.peterson@alaska.gov>; Rep. Bryce Edgmon <Rep.Bryce.Edgmon@akleg.gov>; Rep. David Guttenberg <Rep.David.Guttenberg@akleg.gov>
Subject: RE: Compensation Commission Decision

Representative Kito:

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Thank you,
Leslie

From: Rep. Sam Kito [<mailto:Rep.Sam.Kito@akleg.gov>]
Sent: Wednesday, February 21, 2018 2:39 PM
To: Ridle, Leslie D (DOA) <leslie.ridle@alaska.gov>
Cc: Peterson, Darwin R (GOV) <darwin.peterson@alaska.gov>; Rep. Bryce Edgmon <Rep.Bryce.Edgmon@akleg.gov>; Rep. David Guttenberg <Rep.David.Guttenberg@akleg.gov>

Subject: Compensation Commission Decision

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Sincerely,

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