

# LEGAL SERVICES

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

September 19, 2018

**SUBJECT:** Legislative per diem and salary options  
(Work Order No. 31-LS0091)

**TO:** Representative David Guttenberg  
Chair, Legislative Council

**FROM:** Megan A. Wallace   
Director

This memorandum summarizes options available to the legislature to modify the authority of the Alaska State Officer's Compensation Commission (ASOCC) to make findings and recommendations under AS 39.23.540 regarding salaries and per diem for legislators. The decision as to how, or whether, to modify the authority of ASOCC is ultimately a policy decision, and the legislature may wish to pursue a course of action not outlined in this memorandum. As such, this memorandum may not be a comprehensive list of legislative options.

### Background

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.

(Emphasis added).

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

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;*<sup>1</sup> 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.

(Emphasis added).<sup>2</sup>

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<sup>1</sup> Despite the 60-day time frame for disapproving the ASOCC recommendation, ultimately, the legislature may take action by law at any time to address legislative per diem.

<sup>2</sup> In 2008, the "Alaska Salary Commission" was repealed and replaced by AS 39.23.500 - 39.23.599 (Alaska State Officers Compensation Commission).

The legislature's use of the expansive phrase "compensation, benefits, and allowances", in my opinion, includes per diem allowances for legislators. The legislature apparently agreed with this, because in 2008, when it created ASOCC, the legislature also amended AS 24.10.130(c) to include "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.

(Emphasis added).

#### Legislative Options for Revision

- Repeal ASOCC's authority to review "allowances" for members of the legislature, and continue to allow Legislative Council to set an applicable per diem allowance policy.<sup>3</sup>
- Repeal ASOCC's authority to review "allowances" for members of the legislature, and set a legislative per diem allowance by statute.
- Maintain ASOCC's authority to review "allowances" for members of the legislature, but amend the process for disapproving a recommendation by ASOCC, such as
  - requiring affirmative action by the legislature to approve, rather than disapprove, the recommendations before they take effect;
  - expanding the timeframe for the legislature to disapprove the recommendations; or
  - making the recommendations advisory only.
- Maintain ASOCC's authority to review "allowances" under AS 39.23.540, but set a temporary legislative per diem rate for a certain time (for example, for the duration of the Thirty-First Alaska State Legislature) through a provision of uncodified law.

If you have any questions, or if I can be of further assistance, please advise.

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<sup>3</sup> AS 24.10.130(c) would require conforming changes to remove language that the Legislative Council per diem policy must be "in accordance with AS 39.23.540(d)."'