

HJR 18 Statute References

Qualifications to be a superior court judge

AS 22.10.090. Qualifications of judges.

A judge of the superior court shall be a citizen of the United States and of the state, a resident of the state for five years immediately preceding appointment, have been engaged for not less than five years immediately preceding appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. The active practice of law shall be as defined for justices of the supreme court in AS 22.05.070 .

Active Practice of Law

AS 22.05.070 Qualifications of justices.

A justice of the supreme court shall be a citizen of the United States and of the state, a resident of the state for five years immediately preceding appointment, have been engaged for not less than eight years immediately preceding appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. The active practice of law includes

- (1) sitting as a judge in a state or territorial court;
- (2) being actually engaged in advising and representing clients in matters of law;
- (3) rendering legal services to an agency, branch, or department of a civil government within the United States or a state or territory of the United States, in an elective, appointive, or employed capacity;
- (4) serving as a professor, associate professor, or assistant professor in a law school accredited by the American Bar Association

Duties of the Attorney General

Sec. 44.23.010. Attorney general.

The principal executive officer of the Department of Law is the attorney general.

Sec. 44.23.020. Duties; and powers; waiver of immunity.

(a) The attorney general is the legal advisor of the governor and other state officers.

(b) The attorney general shall

- (1) defend the Constitution of the State of Alaska and the Constitution of the United States of America;
- (2) bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection of revenue;
- (3) represent the state in all civil actions in which the state is a party;
- (4) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(5) administer state legal services, including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs; and give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature;

(6) draft legal instruments for the state;

(7) make available a report to the legislature, through the governor, at each regular legislative session

(A) of the work and expenditures of the office; and

(B) on needed legislation or amendments to existing law;

(8) prepare, publish, and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights; the contents of the pamphlet and any revision shall be approved by the Department of Law before publication; and

(9) perform all other duties required by law or which usually pertain to the office of attorney general in a state.

(c) Before January 1, 1999, the attorney general may, in a case that involves the state's title to submerged lands, or in any case in which the state seeks to allocate fault to the federal government or a federal employee under AS 09.17.080 , waive the state's immunity from suit in federal court provided under the Eleventh Amendment to the Constitution of the United States. The expiration on January 1, 1999, of the attorney general's authority to waive the state's Eleventh Amendment immunity does not affect existing waivers in ongoing cases.

(d) The attorney general may, subject to the power of the legislature to enact laws and make appropriations, settle actions, cases, and offenses under (b) of this section.

(e) There is established within the Department of Law the function of public advocacy for regulatory affairs. The attorney general shall participate as a party in a matter that comes before the Regulatory Commission of Alaska when the attorney general determines that participation is in the public interest. When considering whether participation is in the public interest, the attorney general shall consider the issues the Regulatory Commission of Alaska must take into consideration under AS 42.05.141 (d).

(f) The attorney general shall designate not less than one-half attorney position in the Department of Law for the purpose of prosecuting actions for fraudulent acts related to workers' compensation under AS 23.30.

(g) The attorney general may, in cases that involve compliance, discharge, or enforcement of responsibilities assumed by the Department of Transportation and Public Facilities under AS 44.42.300 , waive the state's immunity from suit in federal court provided under the Eleventh Amendment to the Constitution of the United States.

(h) The attorney general shall continue to review federal statutes, regulations, presidential executive orders and actions, and secretarial orders and actions that may be in conflict with and that may preempt state law. If, after review, the attorney general believes that a federal statute, regulation, presidential executive order or action, or secretarial order or action would preempt a state law if constitutional and properly adopted in accordance with federal statutory authority but also believes that the federal statute, regulation, presidential executive order or action, or secretarial order or action is unconstitutional or was not properly adopted in

accordance with federal statutory authority, the attorney general shall report the findings to the chairs of the house and senate committees having jurisdiction over judicial matters. The report shall be submitted to the legislature on or before January 15th of each year and must include

- (1) a copy of the federal statute, regulation, presidential executive order or action, or secretarial order or action that the attorney general finds was not properly adopted in accordance with federal statutory authority or is unconstitutional;
- (2) a citation to the state law that is in conflict with the federal statute, regulation, presidential executive order or action, or secretarial order or action identified in (1) of this subsection;
- (3) a written opinion explaining
 - (A) the basis for finding that the federal statute, regulation, presidential executive order or action, or secretarial order or action is unconstitutional or was not properly adopted in accordance with federal statutory authority;
 - (B) the conflict between the federal statute, regulation, presidential executive order or action, or secretarial order or action identified in (1) of this subsection and the state law identified in (2) of this subsection and why, if properly adopted, the federal statute, regulation, presidential executive order or action, or secretarial order or action would preempt the state law;
 - (C) the effect on the state if the state law identified in (2) of this subsection is found by a court to be preempted by the federal statute, regulation, presidential executive order or action, or secretarial order or action identified in (1) of this subsection; and
 - (D) litigation the attorney general is party to or aware of concerning a conflict between a federal statute, regulation, presidential executive order or action, or secretarial order or action that would preempt state law if constitutional, but that the attorney general or another party claims is unconstitutional; and
- (4) other information relevant to the findings by the attorney general.

Compensation of Attorney General

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.

Sec. 39.23.550. Recommendations relating to compensation.

(a) A recommendation of the commission may not have the effect of reducing the compensation or benefits of the governor and lieutenant governor who are in office or an executive department head who is appointed on or before the effective date of the commission's recommendation.

(b) The commission may recommend reduction in compensation for individuals who become governor, lieutenant governor, or an executive department head after the effective date of the commission's recommendation.

Sec. 39.23.560. Recommendations relating to benefits.

The recommendations of the commission relating to benefits may not include any recommendation relating to health, retirement, disability, or death benefits under AS 39.30 and AS 39.35 for members of the legislature, the governor, the lieutenant governor, and each principal executive department head.