

# LEGAL SERVICES

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## MEMORANDUM

March 21, 2023

**SUBJECT:** ASOCC recommendations and legislative options  
(Work Order No. 33-LS0674)

**TO:** Representative Craig Johnson  
Attn: Tom Wright

**FROM:** Megan A. Wallace  
Chief Counsel 

You have asked for legislative options for acting on the current recommendations of the Alaska State Officers Compensation Commission (ASOCC), including discussion of relevant timing implications and the impact of the governor's veto of SB 86.

### Factual Background

On January 24, 2023, ASOCC issued a Final Findings and Recommendations Report. The report states:

The commission recommends the following:

- 2% increase for each year, due to inflation, since the last salary increase for Governor, Lieutenant Governor and department heads

\* \* \*

For the Governor, this would result in an increase in pay from \$145,000 to approximately \$176,000 and for the Lieutenant Governor, it would result in an increase from \$125,000 to approximately \$140,000. For department heads, the increase would be from \$141,160.50 to approximately \$168,000 (final amounts to be determined by Division of Finance).

The report was read across by the senate on January 27, 2023, and by the house on February 1, 2023.

On February 24, 2023, SB 86 was introduced by the Senate Finance Committee. SB 86 provides:

The recommendations contained in the final report of the State Officers Compensation Commission relating to the salaries of the governor, the lieutenant governor, and each principal executive department head, made available under AS 39.23.540(d) to the governor and presiding officers of each house of the legislature during the First Regular Session of the Thirty-Third Alaska State Legislature, are disapproved.

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SB 86 passed the senate on February 27, 2023. On March 6, 2023, SB 86 passed the house. On March 8, 2023, SB 86 was transmitted to the governor.

It has been reported that following passage of SB 86, all members of ASOCC either resigned or were removed from the commission by the governor and were replaced by five new members.<sup>1</sup> On March 16, 2023, ASOCC issued Amended Final Findings and Recommendations. The Amended Final Findings and Recommendations state:

The final findings and recommendations, submitted on January 24, 2023, were rejected by the legislature. The commission was then called into session by then Chair Kurt Olson to review the findings. The commission met on March 15, 2023, and amended the findings and recommendations to set legislative salaries at \$84,000 per year. The commission also ratified waiving the 20-notice requirement for commission members in statute. This report has been updated with the additional legislative pay information. The discussion portion of the Governor, Lieutenant Governor and commissioners' salaries remains the same. . . . As amended on March 15, 2023, the commission recommends an annual salary of \$84,000 for all legislators. This is approximately half of what was previously recommended for commissioners.

The Amended Final Findings and Recommendations report was read across in both the house and the senate on March 17, 2023.

On March 20, 2022, the governor explained the veto of SB 86 in a letter to the Senate President and Speaker of the House as follows:

The State Officers Compensation Commission met on March 15, 2023, and modified their report, to include legislative salaries to be set at half the compensation of Commissioners, or \$84,000. As amended, the report now provides a comprehensive compensation plan that includes the legislature. This bill is no longer necessary as the issue has been resolved by the amendment to the report.<sup>2</sup>

Disapproving ASOCC Recommendations and Impact of SB 86

AS 39.23.540(d) sets out the process for disapproving the recommendations of ASOCC. That subsection provides:

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<sup>1</sup> See <https://www.adn.com/politics/alaska-legislature/2023/03/20/gov-dunleavy-removes-last-hurdle-for-67-pay-raise-for-lawmakers-20-raise-for-himself-and-cabinet/> (last accessed March 21, 2023).

<sup>2</sup> *Id.*

(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.<sup>3</sup>

AS 39.34.540(e) provides in its entirety that "[t]he commission may prepare amendments to the report submitted under (d) of this section and notify the legislature that the amendments are available." AS 39.23.540(e) is silent, however, as to whether an amendment to the final report submitted under (d) triggers a new 60-day deadline for the legislature to disapprove the ASOCC recommendations. Because the statute contemplates an amendment to the report but is silent as to the 60-day deadline or any extension thereof, the conservative interpretation is that the 60-day deadline is *not* extended.<sup>4</sup>

Under AS 39.23.540(d), a bill disapproving ASOCC's recommendations must be enacted within 60 days after ASOCC's findings and recommendations are submitted to the governor, the Speaker of the House, and the President of the Senate.<sup>5</sup> If a bill is not passed and enacted, the recommendations become effective.

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<sup>3</sup> Emphasis added. In 2008, the "Alaska Salary Commission" was repealed, and replaced by AS 39.23.500 - 39.23.599 (Alaska State Officers Compensation Commission).

<sup>4</sup> This argument is further bolstered by the fact that AS 39.23.540(a) provides that 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.*" Emphasis added. Thus, the March 16, 2023, amendment submitted by ASOCC should not be treated like a new report.

<sup>5</sup> 60 days from January 24, 2023, is March 25, 2023. Because the report was read across to the house and senate on different dates, it is not clear what day the report was submitted to the presiding officers for purposes of calculating the statutory deadline

In this case, while SB 86 was passed by the legislature disapproving the "final findings and recommendations," it was vetoed by the governor and has not yet been enacted. Further, because SB 86 was drafted and passed by the legislature before ASOCC issued its "Amended Final Findings and Recommendations," even if the legislature were to override the governor's veto, it might be disputed whether SB 86 would have the effect of disapproving the findings issued in the "Amended Final Findings and Recommendations."<sup>6</sup> More specifically, SB 86 only refers to the ASOCC "final report" and is silent as to any subsequent amendments and only expressly identifies "the salaries of the governor, the lieutenant governor, and each principal executive department head."<sup>7</sup> SB 86 is also silent as to the new ASOCC recommendation on legislative salaries.<sup>8</sup> While it might be argued SB 86 does not have the effect of disapproving ASOCC's amended recommendations, which were issued after passage of SB 86, it is more likely that a court would find that SB 86 is sufficient to disapprove all recommendations issued by ASOCC, since there ultimately can only be one "final report," even if it was later amended, and that SB 86 sufficiently disapproves the ASOCC "final report."

Nevertheless, if the legislature does not want to leave this issue to debate, the legislature has options other than disapproving ASOCC's recommendations in the 60-day period. First, related to the amended set of recommendations, the legislature could pass a bill disapproving all or some<sup>9</sup> of the recommendations after the 60-day period in AS 39.23.540(d), but before those recommendations take effect.<sup>10</sup> Second, the legislature could refuse to fully fund the recommendations by appropriation.

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under AS 39.23.540(d). You might want to verify with the Speaker of the House the date the report was submitted to the presiding officers.

<sup>6</sup> SB 86 (33rd Alaska State Legislature).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> AS 39.23.540(d) states that the bill must disapprove "all" of the recommendations. However, the legislature could always pass a bill amending AS 39.23.540(d) or provide that the disapproval of certain recommendations is "notwithstanding" the requirement in AS 39.23.540(d) that the bill "disapprov[e] all the recommendations for all officers listed." The bill could also be made retroactive.

<sup>10</sup> Under AS 39.23.540(d), the recommendations do not change the legislative salaries until "the first day of the next regular legislative session" or the salaries of the governor, the lieutenant governor, and each principal executive department head until "the first day of the fiscal year following the fiscal year in which the recommendation is submitted." The bill could "notwithstanding" the requirement in AS 39.23.540(d) that all the recommendations be disapproved within 60 days. The bill could also be made retroactive.

As to the latter point, AS 39.23.540(g) provides that "[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*."<sup>11</sup> Thus, unless the legislature fully funds *all* increases, ASOCC's recommendations do not have the force of law or become effective.<sup>12</sup>

#### Override of SB 86

You also asked for discussion on legislative options for overriding the veto of SB 86. As noted above, the legislature passed SB 86, a bill disapproving the ASOCC recommendations, and transmitted it to the governor on March 8. You are now considering an override of the governor's veto of SB 86. For the reasons discussed above, the legislature might instead consider passing a new bill disapproving the most recent ASOCC recommendations, as to eliminate any debate as to whether SB 86 sufficiently disapproves all of the ASOCC recommendations. On the other hand, if the legislature wants the ASOCC recommendations to have the force of law, the legislature does not need to take any further action.

With respect to veto override timing issues, as was also noted above, the most conservative interpretation of AS 39.23.540(d) is that the 60-day deadline is *not* extended upon amendment to the report by ASOCC. Thus, the most conservative calculation of the 60-day deadline for the 2023 recommendations is that a bill disapproving the recommendations must be enacted into law no later than March 25, 2023.<sup>13</sup>

Article II, sec. 16 of the Alaska Constitution provides: "Upon receipt of a veto message during a regular session of the legislature, the legislature shall meet immediately in joint session<sup>14</sup> and reconsider passage of the vetoed bill or item." The question of how rapidly the legislature must meet in joint session to satisfy the requirement of immediate consideration when a vetoed bill is received during a regular session has not been litigated. The Alaska Constitutional Convention Proceedings do not shed much light on the matter. When the amendment to add the word "immediately" was under consideration one delegate asked the following question:

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<sup>11</sup> AS 39.23.540(g) (emphasis added).

<sup>12</sup> *See also* AS 39.23.540(d) (providing that the recommendations have the force of law "subject to (g) of this section"). Legislative history seems to indicate that subsection (g) was included to avoid creating a debt in the event that the legislature did not appropriate funds necessary to cover the recommended increases.

<sup>13</sup> *See supra* n. 5. 60 days from January 24, 2023, is March 25, 2023. If the date the report was submitted to the presiding officers was later than January 24, 2023, the statutory deadline under AS 39.23.540(d) might be later than March 25, 2023.

<sup>14</sup> *See* Uniform Rule 51.

SUNDBORG: "The legislature sitting as one body shall immediately reconsider the passage of the bill." He returns it to the house of representatives together with his objections and the legislature sitting as one body and now it is proposed immediately to reconsider the passage of the bill. Would that mean that once the governor's veto message hits the clerk's desk in the house of representatives, that all business of both houses ceases at that moment and they go into joint session to immediately consider this matter?<sup>15</sup>

That question was not answered, although the amendment was, indeed, adopted. Therefore, the legislature should take action on a vetoed bill received during a regular session just as soon as reasonably possible. Because art II, sec. 16 requires action on a veto by the fifth day of a special session when a veto is received during the interim, it is possible that the court will look to that time-period for guidance in defining the outer limit within which the legislature should act even during a regular session.

Until 1960, joint sessions to consider vetoed bills were held the same day the veto was received or the day after. In 1961 a joint session was held 4 days after receipt of a vetoed bill. Since that time, the period within which a veto has been taken up in joint session has varied. Vetoed bills have been taken up on the day received or a day or two later and as late as 20 days after receipt.

Vetoes of the following bills have been taken up and overturned within a period that exceeded five days, but none of these actions was challenged:

SB 527	Vetoed on 4/17/70	Overridden on 4/30/70
HB 550	Vetoed on 2/19/76	Overridden on 2/25/76
SB 98	Vetoed on 5/15/75	Overridden on 5/21/75
HB 45	Vetoed on 4/27/79	Overridden on 5/4/79
HB 640	Vetoed on 4/29/82	Overridden on 5/4/82
SB 363	Vetoed on 6/19/02	Overridden on 6/25/02

SB 86 was vetoed by the governor on March 20, 2023.

If you have further questions, please let me know.

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23-053.boo

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<sup>15</sup> Alaska Constitutional Convention Proceedings, Part 3, page 1745.