

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

January 30, 2012

1:32 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Joe Paskvan
Senator Lesil McGuire
Senator John Coghill

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 168

"An Act relating to geographic cost-of-living salary adjustments for justices of the supreme court and judges of the superior and district courts; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 173

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 168

SHORT TITLE: GEOGRAPHIC COLA FOR JUDGES

SPONSOR(s): RULES BY REQUEST

01/18/12	(S)	READ THE FIRST TIME - REFERRALS
01/18/12	(S)	JUD, FIN
01/30/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 173

SHORT TITLE: 2012 REVISOR'S BILL

SPONSOR(s): RULES BY REQUEST OF LEGISLATIVE COUNCIL

01/23/12 (S) READ THE FIRST TIME - REFERRALS
01/23/12 (S) JUD
01/30/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

DOUG WOOLIVER, Deputy Administrative Director
Alaska Court System
Anchorage, AK

POSITION STATEMENT: Introduced SB 168.

KATHRYN KURTZ, Assistant Revisor of Statutes
Legislative Legal and Research Services Division
Legislative Affairs Agency
Juneau, AK

POSITION STATEMENT: Introduced SB 173.

ACTION NARRATIVE

[1:32:08 PM](#)

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Paskvan, Coghill, Wielechowski, and Chair French. Senator McGuire arrived soon thereafter.

SB 168-GEOGRAPHIC COLA FOR JUDGES

[1:32:38 PM](#)

CHAIR FRENCH announced the consideration of SB 168.

DOUG WOOLIVER, Deputy Administrative Director, Alaska Court System, stated that SB 168 was introduced by the Senate Rules Committee by request of the Alaska Supreme Court. It seeks to update the geographic differential statutes that apply to judges. Under current law, employees in the executive and judicial branches receive a geographic differential on their salary to help offset the cost of living in the communities where they live. Each community has an estimated cost of living rate that is applied to the salaries of employees in that community, but the rules for judges are different and have two restrictions. The geographic differential for judges is limited to 17.5 percent of the base salary, regardless of the cost of living in the community, and it is applied to just the first \$40,000 of their salary. The most a judge can get for a geographic cost of living adjustment is 17.5 percent of \$40,000 or \$7,000, whereas other state employees in some communities

receive a geographic cost of living adjustment in excess of \$30,000.

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The Legislature has approved geographic differentials in recognition of the staggeringly high cost of living in many rural areas of the state. Anyone who lives in rural Alaska and works for the state has their salary adjusted so it is somewhat commensurate with salaries in urban areas. However, judges in rural Alaska are currently disadvantaged compared to judges in urban Alaska. The Legislature has made geographic adjustments for all other state employees and the court would like that adjustment for judges as well. This is an act of fairness and will also help address the challenge of filling vacancies in rural communities. This has been a particular problem in Bethel where the Judicial Council has struggled to find enough qualified applicants. Upcoming vacancies in Nome and Barrow will also be a challenge to fill. Adjusting the cost of living allowance may not solve this problem, but it is one thing that can be done.

MR. WOOLIVER clarified that the current law states that the geographic differential is not applied to the judicial retirement, and the bill does not seek to change that. What it does seek to change is the geographic differential so that judges are not disadvantaged simply because they live and work in rural Alaska.

He reviewed a colored spreadsheet showing the various cost of living adjustments, the number of judges in each community, their base salaries, the current geographic differential, what it would be under both the statutory differential- which is what the non-covered employees in the Executive Branch receive, and what it would be under the recently renegotiated union contracts. He explained that this gives an idea of what other employees get in terms of a differential and what judges get in terms of a percentage of their current salary. For example, in the Second Judicial District the differential is less than 4 percent of salary, whereas in Kotzebue under the recent union contract it's 60 percent. The bill seeks to tie judges' geographic differential to the statutory provisions that apply to all the attorneys that appear before them. Whenever that statute is changed, it would apply to judges as well.

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SENATOR MCGUIRE joined the committee.

CHAIR FRENCH reviewed the columns in the chart. Column one shows where the judge serves; column two gives the FY13 base salary; and column three tells the current geographic differential, which is capped at 17.5 percent.

MR. WOOLIVER reiterated that the differential applies to just the first \$40,000 of salary.

CHAIR FRENCH said the yellow column four shows the dollar amount of the differential, up to a maximum of \$7,000. Barrow, for example, receives the maximum \$7,000 bump to the \$181,440 base salary. He asked the meaning of column five that shows the geographic differential percentage applicable to exempt employees.

MR. WOOLIVER explained that those are non-union employees in the executive branch, and they're governed by the statute referenced in the bill.

CHAIR FRENCH asked if they are currently getting whatever the geographic differential is, applied to their entire salary.

MR. WOOLIVER answered yes.

CHAIR FRENCH observed that the green column [six] shows what the dollar amount would be if the percentage in column five were applied to the judges' base salary in column one. The bill seeks to add the amount in the green column to each judge's salary.

MR. WOOLIVER agreed.

CHAIR FRENCH asked for an explanation of columns seven and eight.

MR. WOOLIVER replied they reflect the [percentage and dollar amount] of the most recently negotiated union contracts. They probably reflect the most recent thinking on the cost of living in the various communities.

CHAIR FRENCH observed that if the bill were to pass the Barrow judge's salary, for example, would be adjusted by 36.9 percent and perhaps as much as 50 percent, given the new union contracts.

MR. WOOLIVER responded the salary would go up whenever the statute was changed, and that hasn't happened in a number of years.

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CHAIR FRENCH said he understands the fairness issue, but wonders whether judges' salaries haven't gotten larger increases in the last several years to compensate for the fact that their geographic differentials aren't as good.

MR. WOOLIVER said judges receive good salaries, but what the bill tries to address is that under the current scheme, judges living in Anchorage get a much better deal.

CHAIR FRENCH asked if the court gets stronger applicant pools for Anchorage judgeships than those in Barrow and Bethel.

MR. WOOLIVER replied that's almost always the case and probably always will be, but salary shouldn't be another barrier to getting strong pools in rural areas.

CHAIR FRENCH remarked that he understands the fairness issue, but there's a certain amount of sticker shock looking at the total amount. A Barrow judge, for example, would receive a [\$66,988-\$7,000] geographic differential added to their base salary.

MR. WOOLIVER agreed.

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SENATOR WIELECHOWSKI said he can understand the fairness, but in some cases the judge is probably paid more than twice what the average family earns. In Barrow, "the food's more expensive, the fuel's more expensive; I just don't know if it's \$90,000 more expensive," he stated.

MR. WOOLIVER clarified that it would not be \$90,000, but agreed with the point. It's a lot of money.

CHAIR FRENCH asked how the geographic differential is calculated.

MR. WOOLIVER replied the [percentages] in column five [non-covered geo-diff percent applicable to exempt employees] were set in statute a number of years ago.

CHAIR FRENCH asked if the Legislature developed the differentials.

MR. WOOLIVER replied it was before he started as the liaison to the Legislature. The McDowell group conducted a study in 2008, and while the Legislature didn't amend the statute, it's that kind of information that the unions rely on to make their contracts reflect the current cost of living.

CHAIR FRENCH noted that the statute says the geographic differential for Kotzebue is 36.9 percent, whereas the union contract gives a 60 percent differential. He expressed interest in knowing how the Legislature selected 17.5 percent of \$40,000 as the maximum differential.

MR. WOOLIVER replied the committee minutes were not very detailed when this was adopted in 1978, but the thinking was that \$40,000 was the portion of the salary that was spent on living. He noted that when the statute was adopted for other Executive Branch employees the geographic differential was not limited to 17.5 percent.

SENATOR PASKVAN asked what \$40,000 would be in 2012 dollars.

MR. WOOLIVER replied it was \$73,000 in 2011 dollars.

SENATOR PASKVAN observed that if the same logic were applied, the top differential would be 17.5 percent of \$73,000.

MR. WOOLIVER said that's correct.

[1:48:28 PM](#)

SENATOR MCGUIRE asked for an update on efforts to get more women on the bench, and how information came back to the court that candidates were discouraged from applying for judgeships in rural areas. She stated support for the bill, and asked what data was used to support the request.

MR. WOOLIVER replied the evidence is anecdotal, largely from sitting judges who are frustrated at the cost of living in rural areas compared to what they would be making if they worked in Anchorage. While salary isn't always the motivation for taking the job, it just doesn't seem fair to pay a premium to work in rural Alaska.

With respect to selecting more women to the bench, he said it's better than it used to be in terms of getting applicants and names sent to the governor. He recalled that he distributed information last year on the Judicial Council's work looking at the percentage of women in the bar, the percentage of women that

applied for judgeships and the percentage that applied and had their name forwarded, "and it all does look pretty good through that process." He highlighted that part of the focus of the bench and bar program that Justice Dana Fabe helped put on last summer was attracting more women to the bench, and that the Dillingham superior court position was filled by the local public defender who is a woman. Ironically, her geographic differential will decrease from \$30,000 as a DA to \$7,000 now that she's a judge.

SENATOR MCGUIRE expressed appreciation for Justice Fabe's efforts and asked for more outreach. She said that she's spoken to many women who would be excellent judges, but, in general, they wait to be tapped. There's a cultural difference, and women don't seem to be willing to put their name forward to be judged by their peers. She urged more outreach and effort, particularly in Anchorage, because victims of domestic violence and sexual assault who believe that they would have a more friendly audience in a courtroom with a female judge do not have that opportunity in Alaska. "Let's beef up our efforts," she concluded.

[1:53:44 PM](#)

SENATOR PASKVAN asked how much the base salary had increased since the \$40,000 was set in statute, and how much the average wage in Alaska increased over that same time.

MR. WOOLIVER said he'd try to get the information.

CHAIR FRENCH suggested he contact economist Neal Fried.

SENATOR COGHILL asked how magistrates fit in the picture.

MR. WOOLIVER replied they're in the PERS system and therefore get the full geographic differential on their full salary. It's only appointed judges who do not.

SENATOR COGHILL asked what the starting salary is for a magistrate.

MR. WOOLIVER replied he would follow up and provide salary information for the four levels of magistrates.

SENATOR COGHILL commented that any sympathy he has is diminished by his association with the Office of Children's Services. These are range 15-18 employees that "literally run themselves to

death," yet their salary with the geo-diff barely gets them to that [\$40,000] cutoff point.

[1:56:11 PM](#)

CHAIR FRENCH responded the entire committee is feeling that.

SENATOR PASKVAN asked what the difference is between the retirement systems for a magistrate and a judge.

MR. WOOLIVER replied magistrates are part of the Public Employee Retirement System (PERS) and are Tier I-III defined benefit retirement employees or Tier IV defined contribution retirement employees. Judges are part of the Judicial Retirement System (JRS) and receive a pension that is calculated on years of service up to a maximum of 75 percent of a sitting judge's salary.

CHAIR FRENCH commented that a friend is a retired judge and he smiles broadly when he discusses his retirement.

SENATOR COGHILL said he understands that judges can be called out of retirement to take caseloads. He asked if that is discretionary.

MR. WOOLIVER responded it's discretionary on both sides. A judge may remain eligible to serve pro tem and the court has the discretion to select the retired judge. Many retired judges continue to serve part time and the court system relies on them heavily.

SENATOR COGHILL said he has great respect for the judges that serve pro tem and he loses respect for those who decline.

CHAIR FRENCH asked if a pro tem judge receives retirement salary plus pro tem compensation.

MR. WOOLIVER estimated that pro tem judges receive about \$500 per day. If they are also drawing retirement, and not all are, the combined pro tem and retirement pay cannot exceed a sitting judge's salary.

SENATOR PASKVAN conveyed condolences to the family of the Sitka magistrate who recently lost his life in an unfortunate accident.

CHAIR FRENCH said it was a very sad story and noted that he was a training magistrate who was looked to for leadership and guidance.

[2:00:02 PM](#)

CHAIR FRENCH announced he would hold SB 168 in committee awaiting follow-up information.

SB 173-2012 REVISOR'S BILL

[2:00:11 PM](#)

CHAIR FRENCH announced the consideration of SB 173.

KATHRYN KURTZ, Assistant Revisor of Statutes, Legislative Legal and Research Services Division, Legislative Affairs Agency, explained that that SB 173 is the general revisor's bill. It suggests improvements to the statutes by correcting or removing conflicts, deficiencies, and obsolete provisions. This year it contains a lot of fixes to obsolete provisions.

Sections 1 and 2 remove obsolete date references. Section 3 removes a reference to federal territorial law. Section 4 updates the name of the "municipal harbor facility grant fund" to the "harbor facility grant fund" to reflect earlier changes to the program to cover more than just municipalities.

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SENATOR WIELECHOWSKI referred to Section 3, and asked what was included in 48 United States Code (U.S.C.) 473-479.

MS. KURTZ explained that those sections were omitted from the federal code because they related to Alaska as a territory and thus were obsolete. Language was retained that makes the Alaska National Guard and the Alaska Naval Militia subject to all applicable federal laws, but the reference to adopting regulations that are not inconsistent with law that has essentially gone away at the federal level wasn't helpful.

CHAIR FRENCH observed that the legal profession is slow to change its verbiage. If the statute were written today it might say "consistent with" rather than "not inconsistent with."

MS. KURTZ agreed it would sound better.

[2:04:47 PM](#)

CHAIR FRENCH noted that Section 5 [removes a reference to "the effective date of this subsection"] and inserts a specific date that might sometime need to be removed.

MS. KURTZ agreed that the specific date would eventually need to be changed, but the reference to the effective date of the section was deleted because it wasn't helpful.

Sections 5-12 deal with definitions that were repealed, but still referred to someplace. Section 5 removes a definition for "renewable energy resources" by reference to AS 42.45.045 since that section is subject to a delayed repeal that is scheduled to occur in 2013. Section 6 inserts in a new subsection AS 42.05.711(s), the definition for "renewable energy resources" currently in AS 42.45.045. Now the same definition will appear in two places; one will sunset and the other will not.

Sections 7-12 deal with the definition of "school district." Section 7 amends AS 43.20.014(f)(1), which defines "school district" by reference to the definition in AS 14.03.126, which was repealed in 2006 and effective in 2009. This section removes the reference to AS 14.03.126 and inserts the text of the definition in AS 43. 20.014. Sections 8-12 refer to the definition of "school district" given in AS 43.20.014.

Section 13 amends AS 44.62.190, relating to notice of the proposed adoption, amendment or repeal of a regulation. The paragraph amended, AS 44.62.190(a)(6) that provides for electronic notice of these changes to legislators. The amendment deletes the qualifying phrase "if the state agency has the technological capability," because, according to the regulations attorney at the Department of Law, all departments have this capability. This section also deletes the clause permitting an agency to furnish the notice by other means if the agency doesn't have the capability to furnish the notification electronically.

Section 14 repeals AS 21.27.380(f), which provides for the renewal of two year trainee licenses issued to a managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, or surplus lines broker. The provisions permitting issuance of those two year trainee licenses - AS 21.27.600, AS 21.27.680, AS 21.27.740 and AS 21.27.800, were repealed in 2004 so the renewal provision is superfluous.

SENATOR WIELECHOWSKI asked if the definition for "school district" in Section 7 is the same definition that was in AS 14.03.126.

MS. KURTZ answered yes.

2:08:43 PM

CHAIR FRENCH announced he would hold SB 173 in committee.

SENATOR WIELECHOWSKI reported that this was the first day he was completely paperless, and it went well.

2:09:31 PM⁹

There being no further business to come before the committee, Chair French adjourned the meeting at 2:09 P.M.