

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 1, 2013

1:06 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Gabrielle LeDoux
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

Representative Neal Foster
Representative Charisse Millett

COMMITTEE CALENDAR

HOUSE BILL NO. 100

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

- HEARD & HELD

HOUSE BILL NO. 81

"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: HB 100

SHORT TITLE: GEOGRAPHIC COLA FOR JUSTICES AND JUDGES

SPONSOR(S): RULES BY REQUEST

02/01/13	(H)	READ THE FIRST TIME - REFERRALS
02/01/13	(H)	JUD, FIN
03/01/13	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 81

SHORT TITLE: 2013 REVISOR'S BILL

SPONSOR(S): RULES BY REQUEST OF LEGISLATIVE COUNCIL

01/22/13 (H) READ THE FIRST TIME - REFERRALS
01/22/13 (H) JUD
03/01/13 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

DOUG WOOLIVER, Deputy Administrative Director
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: Presented HB 100 on behalf of the House Rules Standing Committee, sponsor by request.

KATHRYN KURTZ, Revisor of Statutes
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: As the revisor of statutes, presented HB 81 on behalf of the House Rules Standing Committee, sponsor by request of Legislative Council.

ACTION NARRATIVE

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CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Keller, Gruenberg, LeDoux, and Lynn were present at the call to order. Representative Pruitt arrived as the meeting was in progress. Representatives Foster and Millett were excused.

HB 100 - GEOGRAPHIC COLA FOR JUSTICES AND JUDGES

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CHAIR KELLER announced that the first order of business would be HOUSE BILL NO. 100, "An Act relating to the geographic cost-of-living adjustment to the salaries of supreme court justices, superior court judges, and district court judges; and providing for an effective date."

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DOUG WOOLIVER, Deputy Administrative Director, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), explained that HB 100 would update the statutes governing the geographic cost-of-living adjustment (COLA) applied to the salaries of Alaska's [justices and] judges. Under current law, employees in both the judicial and executive branches of government receive a COLA based on the cost of living in the communities in which they work, and this COLA is applied to their entire yearly salary. However, for [justices and] judges, the COLA is only applied to the first \$40,000 of their yearly salary, and the maximum percentage by which that portion of their salary can then be adjusted is 17.5 percent, [but then only for justices and judges living in certain communities,] resulting in a maximum yearly COLA of only \$7,000 for such a [justice or] judge under current law. In contrast, many [other ACS] employees receive a yearly COLA far in excess of \$30,000.

MR. WOOLIVER explained that via COLAs, the salaries of those serving in rural areas of the state can be made commensurate with the salaries of those serving in urban areas, something the legislature has long recognized the value of, having provided for COLAs in statute since 1966. The cost of living in Kotzebue, for example, is 60 percent higher [than in Anchorage]. However, under current law, a [justice or] judge working in Kotzebue "makes essentially the same as a [justice or] judge in Anchorage," he remarked, [instead of being provided the same COLA as other ACS employees serving in Kotzebue]. For Bethel, especially, recruitment of [justices and] judges has been a big challenge, in part because of the high cost of living in that community - approximately 50 percent higher than in Anchorage. Remarking on difficulties the Alaska Judicial Council (AJC) has had in filling judicial positions in rural communities, and on anticipated upcoming judicial vacancies, he acknowledged that an increase in the COLA for justices and judges won't necessarily solve the AJC's recruitment problem, but again pointed out that the high cost of living in rural communities is one of the main hurdles to judicial recruitment.

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MR. WOOLIVER noted that under current law, the COLAs applied to the salaries of justices and judges are not also applied to their retirement [contributions/benefits]; HB 100 would not change this. Again, the goal is to update the statutes governing the COLA applied to the salaries of Alaska's [justices and] judges. Under the bill, the COLA would only be applied to

the first \$100,000 of a [justice or] judge's salary, but would be equal to the COLA received by other judicial-branch employees assigned to serve in that particular community.

MR. WOOLIVER, in response to questions, relayed that the base salary of a supreme court justice, a superior court judge, and a district court judge is [\$196,224], [\$181,440], and [\$153,840], respectively; that the COLA currently applied to the salaries of justices and judges serving in Fairbanks is [3.5 percent]; that currently the only Alaska Supreme Court justice whose salary would be impacted by the bill is Justice Daniel E. Winfree; that the reason for having the bill's proposed COLA apply only to the first \$100,000 of a justice or judge's base salary is mainly to minimize the bill's fiscal impact as much as possible, as well as in recognition of the fact that at a certain point, a higher cost of living won't necessarily result in a continued increase in spending; and that no other state employee has his/her COLA applied to only a portion of his/her salary - all COLA's except for those applied to the salaries of justices and judges are applied to the employee's entire base salary, though what specific COLA is used varies [depending on which particular statute governs the employee's salary].

REPRESENTATIVE GRUENBERG said he wouldn't have a problem with having the COLA apply to a justice or judge's full salary.

MR. WOOLIVER - in response to other questions - indicated that compared to other states, Alaska ranks about in the middle in terms of what it pays its state justices and judges, and offered to research nationwide statistics regarding such salaries and associated COLAs further and provide that information to the committee.

CHAIR KELLER indicated that he didn't have a problem with providing for a fair salary for Alaska's justices and judges, taking into account the state's current fiscal restraints, however.

REPRESENTATIVE PRUITT characterized the bill's proposed changes as substantial.

MR. WOOLIVER mentioned that via a past iteration of the bill, the proposal was to have a justice or judge's COLA applied to his/her entire salary, and relayed that the ACS would be amenable to working on additional compromises regarding the bill's proposed changes. In response to further questions and comments, he provided additional information about the AJC's

judicial-recruitment challenges in rural areas of the state, and again acknowledged that an increase in the COLA for justices and judges won't solve those challenges, adding, however, that what can be done is to at least make the salaries more commensurate, in a real sense, with that received in the urban areas.

CHAIR KELLER relayed that HB 100 would be held over.

HB 81 - 2013 REVISOR'S BILL

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CHAIR KELLER announced that the final order of business would be HOUSE BILL NO. 81, "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

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KATHRYN KURTZ, Revisor of Statutes, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), after noting that the purpose of a revisor's bill - prepared annually under AS 01.05.036 - is to correct or remove deficiencies, conflicts, and obsolete provisions in statute, relayed that the changes proposed via HB 81 are limited to matters wherein legislative policy is clear. The Department of Law (DOL), she also noted, has reviewed the bill and provided helpful comments. [Referring to the sectional analysis included in members' packets,] she explained that Section 1 would add the term, "destination resort license" to the list of alcoholic beverage licenses [issued under AS 04.11]; this proposed change corrects an omission that occurred when this type of license was originally established in statute. Section 2 would update a reference [in AS 04.11] to an educational accreditation organization that has since changed its name. Section 3 would remove [from AS 08.70.110] a reference to nursing home administrators licensed under specific emergency regulations that were repealed in 1977; the DOL has indicated that no one is operating under such a license anymore, making the statutory reference obsolete. Sections 4 and 6, respectively, make corrective changes to AS 11.46.495 and AS 11.56.810 - [certain definitions pertaining to] offenses against property, and the crime of terroristic threatening [in the second degree], respectively - so that the term, "oil or gas pipeline or supporting facility" is consistent throughout the statutes and comports with how it's already being used.

MS. KURTZ explained that Section 5 - by adding a missing preposition, "to" - would correct a typographical error found in AS 11.51.100(a)(3), which addresses [one manifestation of] the crime of endangering the welfare of a child in the first degree; the altered pertinent language would then read in part, "the other person causes physical injury to or engages in sexual contact with the child". She offered her belief that adding the word, "to" via Section 5 is necessary because it doesn't make sense for the statute to be addressing situations wherein the other person, together "with" the child, causes physical injury to a third party. Section 7 would replace the word "education" with "educational", so that the then-corrected term, "regional educational attendance areas" is used consistently throughout statute. Sections 8 and 9, respectively, would change the term, "election district" to the term, "house district" in AS 15.10.120(a) and AS 15.15.430(a)(3) - addressing appointment of election board, and scope of the review of ballot counting, respectively - so as to match usage of that term elsewhere in statute. Sections 10-17 remove the phrase, "but not limited to" following the word, "including" [as used in certain provisions of AS 18.60; these proposed changes are reflective of the fact that AS 01.10.040(b) already stipulates that the words, "includes" and "including" shall be construed as though followed by the phrase, "but not limited to"].

REPRESENTATIVE GRUENBERG turned the committee's attention back to Section 5's proposed change, and questioned whether the existing statutory language was drafted as it was so that it could also apply in situations wherein the person with whom the child has been left causes physical injury to anyone.

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MS. KURTZ offered her belief that that isn't how that language was meant to be interpreted. Again, Section 5 addresses the statute pertaining to the crime of endangering the welfare of a child in the first degree, and when one reads the pertinent provision in its entirety, it makes sense that it's addressing situations in which the other person causes physical injury to the child who'd been left with him/her. And in such situations, it would be the child's parent, guardian, or the person who is legally charged with caring for the child, who would be guilty of the crime of endangering the welfare of a child in the first degree, because he/she would have left the child with a person known for hurting children and who then causes physical injury to the child.

REPRESENTATIVE GRUENBERG expressed concern that Section 5's proposed change might narrow the scope of AS 11.51.100(a)(3) too much, thereby causing problems for prosecutors.

CHAIR KELLER said he could see why Section 5's proposed change was included in the revisor's bill, and characterized existing AS 11.51.100(a)(3) as really broad and confusing.

MS. KURTZ - remarking that the goal of a revisor's bill is to clarify the law, not change its scope - noted that Section 5 could be deleted and its proposed change to AS 11.51.100(a)(3) dealt some other time via a substantive bill, should the committee want to specifically address the scope of the crime of endangering the welfare of a child in the first degree.

REPRESENTATIVE GRUENBERG offered his belief that Section 5 is proposing a substantive change rather than just correcting a typographical error.

REPRESENTATIVE PRUITT disagreed, but acknowledged that perhaps the scope of existing AS 11.51.100(a)(3) should be addressed at some point, separate from a revisor's bill.

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MS. KURTZ - in response to questioning comments about Section 4's proposed change regarding the term, "oil or gas pipeline or supporting facility" as used in Title 11 - noted that Title 1 stipulates how singular terms and plural terms, such as "facility" and "facilities", for example, are to be construed. Returning to her presentation of HB 81, she reiterated her explanation of the changes proposed by Sections 10-17 to AS 18.60; added that those sections of the bill are intended to clean up the pertinent statutes - primarily addressing [safe employment and definitions related to] safety glazing materials - without changing their meaning; and surmised that the language being deleted - that being the words, "but not limited to" - was probably initially included just because it was copied from similar legislation in another state that didn't specifically outline in statute that the terms, "includes" and "including" shall be construed as though followed by the phrase, "but not limited to", as AS 01.10.040(b) does for Alaska law.

CHAIR KELLER expressed discomfort with the changes proposed by Sections 10-17 to AS 18.60, in that without the words, "but not limited to" following the word, "including", the proposed statutory provisions might be misinterpreted.

MS. KURTZ pointed out, however, that in drafting legislation, Legislative Legal and Research Services has been complying with AS 01.10.040(b) and has been giving consideration to how the words "includes" and "including" are used throughout the statutes. Furthermore, regardless of how a given term might be defined in the dictionary, whenever a term is defined, or otherwise specifically addressed, in statute, its meaning is then clear from a legal standpoint and the courts would look to the statute, not the dictionary, should a question regarding meaning arise.

MS. KURTZ, continuing with her presentation of HB 81, explained that Section 18 would delete [from AS 18.63.040(b), which addresses certificate programs for hazardous painting,] a specific reference to a repealed regulation, and replace it with the words, "the department in regulation"; the altered pertinent language in statute would then read, "standards adopted by the department in regulation". [In following the Manual of Legislative Drafting when drafting legislation,] drafters try not to incorporate specific references to the administrative code because the provision in the code may be renumbered, [repealed,] or amended at any time, [thereby leaving a defective reference in statute]. Section 18's proposed change is in lieu of merely referencing a different regulation.

CHAIR KELLER offered his belief that Section 18's proposed change would broaden the statute.

MS. KURTZ again pointed out that currently, the statute references a regulation that no longer exists, and that although the reference could be updated, the statute would still have the same flaw - that of referencing a specific regulation that could change at some point. Simply updating the specific reference could be done, however, should the committee prefer that approach instead.

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CHAIR KELLER indicated a preference for taking such an alternative approach, regardless that then having to stay abreast of changes in regulation would increase Legislative Legal and Research Services' workload.

REPRESENTATIVE LEDOUX indicated concurrence with Chair Keller's points regarding Section 18.

REPRESENTATIVE GRUENBERG surmised that currently, Section 18's proposed change is in accord with the Manual of Legislative Drafting's stipulation to not include in statute references to specific regulations, whether federal or state, because they can frequently change.

MS. KURTZ concurred.

CHAIR KELLER relayed that he would research the issues raised by Section 18's proposed change further.

MS. KURTZ, returning to her presentation of HB 81, explained that Sections 19-21, 24-27, and 31 address references to the commissioner of the Department of Transportation and Public Facilities (DOT&PF) in several provisions of Title 35, which pertains to public buildings, works, and improvements. Specifically, Section 27 - adding a new paragraph (10) to AS 35.95.100 - would define the term "commissioner" as used in Title 35 to mean the commissioner of transportation and public facilities, [and Sections 19-21, 24-26, and 31 would make conforming changes, with the latter section deleting an identical definition that currently applies only to chapter 27 of Title 35]. It is clear from reading these provisions of Title 35 that that is what is meant when the term, "commissioner" is used, and so with the adoption of these sections of HB 81, all of the provisions of Title 35 could then simply use the term, "commissioner".

REPRESENTATIVE GRUENBERG characterized [the changes proposed by Sections 19-21, 24-27, and 31] as making a lot of sense.

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MS. KURTZ explained that Sections 22 and 23 would remove obsolete date references from provisions [of Title 35] that address rural school facilities, and the Robert B. Atwood Building, respectively. Section 28 would update the statute pertaining to what must be included in the Alaska Online Public Notice System, to reflect that the DOL no longer makes a distinction between the attorney general's formal opinions and his/her memoranda of advice; this is also reflected on the DOL's Internet web site, and it is not anticipated that this proposed change would create a problem. Section 29, by adding the word, "energy" to paragraph (1) of AS 44.88.070 - addressing the purpose of the Alaska Industrial Development and Export Authority (AIDEA) - would correct an oversight that occurred when the statutes addressing the AIDEA were amended in 2012 [via

Senate Bill 25] with regard to establishing a sustainable energy transmission and supply development program. Section 30 resolves an internal conflict created in AS 47.12.310 when a new subsection (i) was added in 2004. Subsection (a) of AS 47.12.310 stipulates that certain information is privileged and may not be disclosed, and lists exceptions to that stipulation. Subsection (i) provided for an additional exception, and so a reference to subsection (i) should have been added to subsection (a)'s list of exceptions back in 2004. Section 30 corrects this oversight.

REPRESENTATIVE GRUENBERG observed that a memorandum dated January 15, 2013, in member's packets addresses the change proposed by Section 4 of HB 81, that of making the definition of the term, "oil or gas pipeline or supporting facility" in AS 11.46.495 comport with how that term is used elsewhere in statute; the memorandum says in part, "Upon review, it was found that the term appeared in more than one section of statute and it was consistently singular." He indicated that Section 4's proposed change is fine with him.

CHAIR KELLER mentioned that the committee would review the changes proposed by Sections 5 and 18 of HB 81 further.

[HB 81 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:02 p.m.