

HB

398

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAP.TOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

March 17, 1977

SUBJECT: Analysis of recommendations of the Salary
Commission (W.O. #3646)

TO: Representative Terry Gardiner, Chairman
House Judiciary Committee

FROM: Richard A. Bradley *B*
Legislative Counsel

In a separate memorandum dated March 14, 1977, I addressed the relationship between the responsibilities of the salary commission and the response of the legislature. In this memorandum, I will seek to comment on problem areas in the Commission's recommendations. At the conclusion of this memorandum, I offer a brief summary of my recommendations as to each separate recommendation.

Initially, I note that the format of the "Final Report" of the commission is in two main sections, containing respectively its "Recommendations" and appendices. Appendix I contains "amplifications" on the "Recommendations" and Appendix II contains "General Philosophical Views of the Commission's Responsibilities." While I have reviewed the Appendices and may comment on what is contained in them, in my opinion, only the "Recommendations" are before the Legislature. AS 39.23.080.

While I have no desire particularly to offer a counterpart set of "philosophical views." I should advise you that in my view Ch. 263, SLA 1976, of which AS 39.23 is a part, grants the Commission the authority to make recommendations as to compensation and retirement benefits of certain public officers. It is similarly my view that efforts by the Commission to manipulate its agreed upon responsibilities to achieve other goals viewed by it as worthwhile are extraneous to the Commission's responsibilities, classically ultra vires, and may generally be disregarded by the legislature.

Parenthetically I note that the delegation of authority from the legislature to the Commission fails to instruct the Commission on what factors were to be considered in setting salaries. Neither the customary cost-of-living concepts nor comparability factors (AS 39.27.030, as enacted by ch. 42, SLA 1971) nor longevity (which may have more value for merit system employees than for elected officers) are specified in AS 39.23 and the commission's structure of "longevity" is flatly contrary to accepted concepts of cost of living adjustments. Notwithstanding inflation, it appears that the governor's salary (and others') is to be frozen and adjusted only as a governor continues in office. See Appendix I, ¶1.

My analysis will follow the order in which the commission made its recommendations.

(1) Governor.

No legal or constitutional problems with the salary recommendation. It does not violate Art. III, §15 of the State Constitution. The governor currently receives \$50,000 per annum. AS 39.20.010. The commission recommends that he be paid \$52,992 per annum.

The commission recommends that the governor "remain" in the retirement system. While the incumbent governor (and lieutenant governor) have elected to join the retirement system, under AS 39.35.125 their coverage is their individual option.

In the Commission's Appendix I, I note that the Commission proposes to give "longevity" pay increases to "incumbent governors" for every two years of service accrual. Whatever the policy justification for that proposal, the question of longevity raises for the governor or lieutenant governor is not before the legislature at this time.

(2) Lieutenant Governor.

No legal or constitutional problems are presented by the Commission's recommendations. It recommends \$47,304 per annum. The lieutenant governor currently receives \$44,000 per annum. AS 39.20.030.

As to retirement, and to "longevity" increases, note my comments relative to the governor.

(3) Department Commissioners.

The Commission recommends that departmental commissioners receive \$47,304 annually. Commissioners currently receive \$40,000. The recommendation presents no legal or constitutional problems; I note that the proposed salary is identical to that proposed for the lieutenant governor.

Departmental commissioners are in the retirement system and it is proposed that they remain there.

Longevity increases are proposed. New appointees apparently will be compensated at the initial level. My earlier comments to the effect that "longevity" apparently ignores cost-of-living factors are appropriate here also.

(4) Deputy Commissioners.

The commission recommends that deputies receive their present entry salary of \$42,372. The present statutory steps for increases (at 39.20.080(b)) is superseded by discretionary longevity increases of 3.75% for each two years of continuous service.

No legal or constitutional problems are created. The existence of deputies in the retirement system is continued.

(5) Directors.

The commission recommended "no change in the salary level of directors." Since there is neither statutory nor regulatory authority for existing levels, it is unclear what is not to be changed; the existing procedure has the level set by the classification of the individual position. The generally understood level for directors of executive line agencies is at Range 26, but not all directors are at that range and it is possible that agencies are working at reclassification subsequent to the Commission's recommendations, apparently without authority of law. Some directors are compensated at levels above Range 26; the various directors not compensated at Range 26 include:

(1)	Mental Health	Range 30
(2)	Public Health	Range 29
(3)	Admin. Services, DC and ED	Range 24
(4)	Alaska Disaster Office	Range 24
(5)	Alcoholic Beverages Control Board	Range 24
(6)	Elections	Range 24
(7)	Alaska Commission for Human Rights	Range 24
(8)	Rural Development Assistance	Range 24
(9)	Wage and Hour Compliance Board	Range 24
(10)	Workmen's Compensation	Range 24
(11)	Management Services	Range 24

It seems that there is a substantial ambiguity in the recommendation and that from the brief statement in the recommendation, it is possible to conclude (1) either that all positions are frozen at their present level and that reclassification may not occur without the Commission making a recommendation, (2) that a single level at which all directors are compensated should be established, or that (3) nothing is to be changed but when a director is appointed, he starts at Step A. Commissioner Elton advised at the hearing on March 14 that the Commission was aware of the existence of directors at different levels. All interpretations will cause some confusion and the committee and the legislature may wish to consider alternatives.

The commission's recommendation for changes "in the administrative rules" and the following comments are not recommendations to the legislature and are not before it.

Longevity raises are not proposed for directors; rather the salary schedule at AS 39.27.011 is utilized, presumably at the times now established, that is, annually.

(6), (7), (8), and (9) Certain listed commissions.

The Commission recommends that the Public Utilities Commission, Alaska Transportation Commission, Alaska Commercial Fisheries Entry Commission, and the Alaska Pipeline Commission commissioners be compensated at \$39,372. They apparently earn \$33,500 at the present time. The commission also recommends that they receive "longevity" increases "at the discretion of the Governor." It seems questionable policy to allow the governor to control the compensation of commissioners who have quasi-judicial responsibilities and who may be called upon to rule on administration proposals.

(10), (11), and (12) The Judiciary.

The commission recommended no increase for any member of the judiciary and no changes in retirement benefits for incumbent judges.

Its other recommendations regarding retirement coverage create some problems.

(C) It recommended that incumbent judges begin contributing to their retirement package at the rate of 2.5% in 1979 and 1980; it says it intends to recommend a pay increase to offset the resulting decrease in compensation. Recommendations 10c, 11c, and 12 c. This, the Commission says, will solve the constitutional question (Art. IV, §13) While the possibility exists that a finely-tuned proposal of this sort may meet the constitution's mandate, in my judgment the "recommendation"

containing this proposal is not before the legislature at this time. It is only a promise, conditioned on another promise not yet contained in a recommendation and no action is required on it at this time.

(D) The last recommendation is that judges appointed after January 1, 1977 contribute to their retirement system. Present law contains no requirement of contributions; while the legislature may establish such a requirement, it may only do it prospectively. If it wishes to do so, it will only be effective for judges appointed subsequent to the date of the amendment of the retirement act and, since judges have been or will be appointed subsequent to January 1, 1977, the law will not apply at the time recommended.

(13) The Legislature

(A) The commission recommends an annual salary of \$11,750 for members of the legislature. Such a recommendation is appropriate.

The commission then recommended that the salary be paid in four increments. Whether that recommendation has merit or not, in my judgment Ch. 263 did not authorize the Commission to vary explicit state law.

Each member of the legislature is entitled to ... compensation ... in approximately equal monthly installments. AS 24.15.020.

The legislature may approve the recommendation and disregard the payment as ultra vires.

(B) The Speaker and the president are each entitled to \$500 under the commission's recommendations. It presents no particular problems.

(C) Members of the legislature get "longevity" increases; under the commission's approach, longevity raises are granted to present members reelected in 1978. The recommendation presents no legal or constitutional problems.

(D) The commission recommends a "vouchered" annual allowance of \$4,000. The amount may appropriately be set by the Commission; the conditions on its payment may not.

The legislature may approve the recommendation and disregard the voucher provision as ultra vires.

(E) The commission recommends that participation in the Public Employee Retirement System be made mandatory for members of the legislature, unless they are now contributing to a state retirement fund and will continue to be a contributing member while a legislator.

The two state retirement funds at present are PERS and Teachers. In the past, members of the legislature while on leave from teaching positions have served in the legislature and made their personal contributions as well as their employers' while in the legislature. (Bob Palmer was said to have done it that way. Presumably the benefits might have been better under the alternative system.)

My information is that such an arrangement would not be possible for employees of the state government, since they would need to resign their position to seek election. Art. II, §5, Alaska Constitution.

Members of the legislature who are retired from PERS (e.g., Ed Dankworth) would have their retirement benefits suspended during their tenure as a legislator if this recommendation is enacted, and then have their benefits recomputed at the end of their term or terms.

(F) The commission recommends that legislators receive the same per diem as is set for other state officers and employees under AS 39.20.110, including the regional variations. Appendix V to the Recommendations indicates the variations.

The commission then picks up the concept from the "Administrative Manual" of "long-term" and "short-term" per diem rates. Section 7640 of the manual establishes the procedures for payment of per diem claims. The usual per diem rate is described as the "short term rate." The Manual states:

A short term per diem allowance is authorized when the circumstances of travel are such that the traveler can reasonably be expected to incur expenses comparable to those arising from the use of good and moderately priced establishments catering to the general public. The short term per diem rate is intended for trips of such duration that monthly rates are not obtainable. The short-term per diem may not be used after the 30th consecutive day in one location unless a continuation has been obtained in advance by the Commissioner of Administration. §7640(1)

Representative Terry Gardiner
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On the other hand;

A long term per diem allowance is authorized when the circumstances of travel are such that the traveler can reasonably be expected to incur expenses comparable to those arising from the use of establishments catering to the long-term visitor. The long term rate may not be used after six months in one location unless a continuation has been approved in advance by the Commissioner of Administration. §7640(2)

A so-called "non-commercial" rate is also authorized by §7640(3) in situations not at all analagous or relevant to the legislative situation.

The per diem allowance concepts quoted above are designed to achieve certain goals of limited relevance to the legislature. They are designed to compensate the true traveler for his reasonable expenses on short-term trips of 30 days or less. If his trip exceeds 30 days, then the assumption is that the traveler should lose the travel status where hotels and restaurants are to be expected and also that the traveler should seek less expensive accomodations, perhaps including cooking facilities. Finally, if the trip continues too long, the assumption is made that the employee has in fact changed his duty station and he is put off per diem.

Since no one expects the legislative session to be completed in 30 days, the logic of a conclusion that long term per diem is at all relevant would be that members of the legislature should move to it on the 30th day (or earlier), since it is quite reasonable to the state to expect legislators to use "establishments catering to the long term visitor." (§7640(2))

In fact, however, the Commission recommended that the long term rate be used after the 100th day of the session. The inference is in my judgment inescapable that the commission may have used the structure of the per diem allowances articulated in §7640 but it misunderstood the logic of §7640, notwithstanding Chairman Diebels' letter of March 2, 1977 to the contrary. (Senate Journal Supplement No. 23).

There is no justification for per diem to be used to encourage the members of the legislature to establish a permanent residence in the state capitol. Use of the lower, long term per diem subsequent to the 100th day must, accordingly, have been designed for some other purpose.

Since it is expected that the typical member of the legislature is maintaining a second household in the district from which he or she was elected, and that, moreover, the public interest is served by this fact, then it seems that the logic of the higher, short term per diem for the entire length of the session is more in keeping with the goals of short term per diem.

In the final analysis, however, the question of concern to me is whether the Commission overreached its authority when, after setting a per diem rate, it sought to change the rate after the 100th day, an event having no apparent relevance to per diem rates.

In my opinion, the answer to the question must be that the commission sought to achieve some purpose other than the narrow responsibility given it to set the "rate of per diem instead of subsistence for each member..." AS 24.15.010. It is of some significance, perhaps, that the law requires the establishment of a single "rate."

My difficulty in providing advice to you on this question, however, is that the commission did not technically exceed the narrow language of the law, that is, it only attempted to set per diem. Unlike the other situations where either recommendation was made that is inconsistent with statutory law or a feature not included in the law was added (vouchering), in this case the apparent manipulation was more subtle.

If the legislature concludes that the commission exceeded its authority, then I suggest that the per diem recommendation be rejected and that AS 24.15.010 be amended to make it explicit that only a single per diem rate may be established.

(g) The final recommendation relative to the legislature is that each legislator be allowed the cost of a round-trip to his home district during the session. While it is not clear what the recommendation is implementing, arguably it comes in under "additional allowances" at AS 24.15.030.

In conclusion, I offer the following analysis of the Salary Commission's recommendations and the action required to implement them:

(1) Governor:

(A) Salary at \$52,992. Requires a resolution to adopt.

(B) The governor "remain" in PERS. The recommendation is ambiguous; if the desire is to put him there without an option out, AS 39.35.125 will need to be amended by law.

(2) Lieutenant Governor:

(A) Salary at \$47,304. Requires a resolution to adopt.

(B) See (1)(B).

(3) Department Commissioners:

(A) Salary at \$47,304. Requires a resolution to adopt.

(B) Commissioners remain in PERS. No action required to implement it.

(C) "Longevity" raises. Requires a resolution to adopt.

(4) Deputy Commissioners:

(A) No change in starting salary recommended. No action required.

(B) Deputies remain in PERS. No action required.

(C) "Longevity" raises. Requires a resolution to adopt.

(5) Directors:

(A) No change in salary level recommended. No action required to implement this recommendation. If legislature wishes to clarify any of the questions presented in my analysis, then a bill would be required.

(B) Salary progression apparently under existing law. No action required.

(C) Remain in PERS. No action required.

(6) Alaska Public Utility Commission:

(A) Salary at \$39,373 annually. Requires a resolution to adopt.

(B) Chairman paid an additional \$500. Requires a resolution to adopt.

(C) PUC commissioners remain in PERS. No action required.

(D) "Longevity" raises at governor's discretion. Requires a resolution to adopt.

(7), (8), and (9), as to the Alaska Transportation Commission, the Alaska Pipeline Commission, and the Alaska Commercial Fisheries Entry Commission have identical recommendations.

(10) Supreme Court:

(A) Salary at \$52,992. No changes recommended; no action required.

(B) No change in benefits for incumbent justices. No action required.

(C) Incumbent justices start contributing in 1979 and 1980 with a raise that the commission promises. There is in fact no present recommendation pending before the legislature and no action is required.

(D) Justices appointed after January 1, 1977 become contributing members of Judicial Retirement System at 7.5%. The date cannot become the date for its implementation. The legislature must amend the Judicial retirement act by a bill and that becomes the earliest effective date. Requires an amendment to law to implement.

(11) Superior Court:

(A) Salary at \$48,576. No change recommended and no action required.

(B) Identical to 10 (B)

(C) Identical to 10 (C)

(D) Identical to 10 (D)

(12) District Court:

(A) Salary at \$41,068. No change recommended and no action required.

(B) Identical to 10 (B)

(C) Identical to 10 (C)

(D) Identical to 10 (D)

(13) Legislature:

(A) Salary of \$11,750. Requires a resolution to adopt. If the legislature agrees, the resolution should recite that the recommendation as to payment violates AS 24.15.020. and that payment should be made pursuant to that section.

(B) Presiding officers receive an additional \$500. Requires a resolution to adopt.

(C) "Longevity" pay increases. Requires a resolution to adopt.

(D) Annual allowance at \$4000. Vouchered. Requires a resolution to adopt. If the legislature agrees that the vouchered concept is extraneous to the commission's authority at AS 24.15.030, it should recite that fact in the resolution.

(E) Participation in PERS be made mandatory. Requires an amendment to law to implement. Questions regarding the election to continue coverage under Teacher's Retirement and regarding members who have already retired from PERS need to be addressed.

(F) Legislative per diem at the higher, "short term" state rate, for the first 100 days of the session, with regional variations. Legislators at home get lower, "long term" rate. "Long term rate" applies after the 100th day. While I believe that the change after the 100th day violates the intent of the legislature, I am not as certain that it violates the letter of the law. Note that the legislature has traditionally had dual per diem rates, though in a different context. If the legislature disagrees with the recommendation, it may amend the authorizing law to require the establishment of a single rate; it would then also reject, by resolution or by nonaction, the recommendation.

(G) A midsession trip home. Requires a resolution to adopt.

RAB:hjd

Jed

March 8, 1978

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 398

The board endorses the attached fiscal note as its fiscal analysis of HB 398.

A majority of the board recommends that HB 398 do pass; one member has no recommendation; and one member was absent.

SUMMARY OF HOUSE BILL NO. 398

(assuming adoption of amendments suggested by Legislative Affairs Agency)

Retirement system affected: PERS

Requires that the governor, lieutenant governor, and members of the state legislature be members of PERS. Takes effect immediately and is retroactive to January 1, 1978.

A M E N D M E N T

IN THE HOUSE

TO: House Bill No. 398

Page 1, between lines 9 and 10:

add the following new material:

* Section 1. AS 39.35.120(b) is amended to read:

(b) Inclusion in the system is a condition of employment
for an employee except an elected official of a political
subdivision.

Renumber the remaining bill sections consecutively

Page 1, lines 21-22:

delete "a participating" and insert "an" in its place

Page 2, lines 1-11:

delete all material and renumber remaining bill sections
consecutively

Page 2, line 12:

change "1977" to "1978"

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 398
 Title An Act Implementing Recommendation of Salary Commission Relating to Retirement
 Requested by _____ Date _____

II. FISCAL DETAIL
 Agency Affected Administration - Division of Retirement and Benefits
 Program Category Affected Retirement and Benefits (PERS)
 Budget Request Unit(s) Affected Public Employees' Retirement System

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars) NONE

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. There are currently only 8 out of 62 elected state officials not already members of PERS.
2. Increase in state employer contribution rate would be minimal.

Paul B. Arnoldt

IV. DATE 1/24/78 PREPARED BY Paul B. Arnoldt
 AGENCY Division of Retirement and Benefits
 PHONE 465-4460

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) Representative Gardiner
 Office of the Governor (Keith Specking)

ok

HOUSE JUDICIARY COMMITTEE MEETING
March 29, 1977

The Meeting was called to order at 7:00p.m. Present at the meeting were Representatives Gardiner, Dankworth, Rudd, Miles, Specking, Brown and Eliason.

HB 265

HB 265 was taken up as the first order of business. Mr. Dankworth gave a brief testimony in favor of the bill. Mr. Specking made the motion to move the bill out of Committee. The motion was unanimously passed.

The Next order of business was HCR 45 and HB 398. The Committee members read over the opinions in the files from the AG's office and Dick Bradley, Legislative Affairs.

Rod Pegues was the first witness to speak on the bill, representing the Attorney General's Office.

Dick Bradley also gave testimony on these bills and it was pointed out by the Committee members that these two witnesses' interpretations of the bills varied considerably. Some points brought up were concerned with the constitutionality of the bills.

A number of motions for amendments were made by the Committee:

Specking Delete 13(f) Line 18 "for the first hundred days of the session". Then asked if both of the attorney's agreed on this particular change. The attorney's did not agree that this was acceptable.

Specking noted the diversitive opinons among the legal opinions that were at the meeting. He stated that he would follow Pegues' opinion and also suggested another change in the bill: \$50 a day away from home and \$35 a day near home..and asked the staff to draft accordingly.

Brown Line 16, change to Legislators who do not reside....asked the attorney's if this would upset the apple cart?

Bradley caution continues that you are either authorized to accept or reject recommendations of the Salary Commission, he thought that the Commissions recommendations were legal.

Rudd The language of the salary Commission is beyond the scope of the Salary Commissioner because they are only authorized to decide the rate and form of legislative contributions.

continued confusion-----

Brown Motion to change (Line 16) "change the.....city of residents to "do not reside in their election districts"
Line 17, put a period after short term rate and delete the rest.(18,19 &20

Specking brought out the problems with Brown's change.

Rudd Amendment - (;) after rate and delete lines 18, 19.

Gardiner asked for vote on the motion: 4 in favor
3 opposed

Pegues spoke to 13(g) and said that setting salaries by residence is shakey by the constitution.

Specking suggested drafting this idea into a bill and run it through also.

Brown: Motion to delet lines 21 through 23, motion carried unanimously.

Bradley spoke to the LAST RESOLVED section of the resolution: give the Commission a mandate in establishing an equitable balance is altered - justification for this last session.

Specking Motion to delet lines 2 through 5, no objection to motion.

Eliason Move to rescend motion on pg. 4 lines 14-20, motion failed.

HB 398

Pegues testified on the bill, said that it couldn't be done.

HB 278 was briefly brought up and Art Snowden gave brief disertation.

Gardiner asked if there were any amendments to HB 398?

There was further discussion on this bill but no motions or amendments were brought before the Committee.

The Meeting was adjourned at 9:00 p.m. with no final action being taken on HCR 45 and HB 398.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

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700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars) NONE

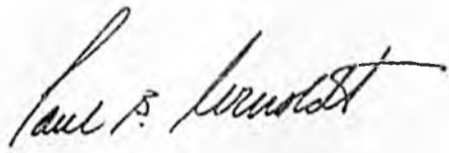
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. There are currently only 8 out of 62 elected state officials not already members of PERS.
2. Increase in state employer contribution rate would be minimal.



IV. DATE 1/24/78 PREPARED BY Paul B. Arnoldt
 AGENCY Division of Retirement and Benefits
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 Original: Legislative Finance
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OK