

HJR

54

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

August 26, 1985

SUBJECT: Initiative petition regarding legislative salaries (Work Order No. 14-1355)

TO: Senator Mitch Abood  
Chairman, Legislative Salary Commission

FROM: Teresa B. Cramer *TBC*  
Legislative Counsel

You have asked several questions regarding the initiative petition relating to the compensation for state legislators.

1. Is the initiative an appropriation and therefore an improper subject for an initiative?

Article XI, Section 7, of the constitution of the State of Alaska prohibits the use of initiatives to make or repeal appropriations. The Alaska Supreme Court has recognized that generally appropriations may be defined as

The setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other. Thomas v. Rosen, 569 P2d 793 (1977) at 796. (Citations omitted.)

If the legislative compensation initiative withdrew a sum of money from the general fund then it would be an appropriation and prohibited by the constitution. However, the initiative merely sets the level of a legislator's salary if an appropriation bill is enacted. The initiative does not authorize expenditures and therefore is not an appropriation.

2. If the initiative petition is adopted, when does it take effect and when can the legislature amend it?

The state constitution provides that following an election, the lieutenant governor shall certify the results of the election. An initiated law becomes effective ninety days after the lieutenant governor's certification. The legislature may not repeal an initiated law for a period of two years after its effective date. There are no time restrictions on the power of the legislature to amend an initiated law. Article XI, Section 6.

This raises a question concerning the distinction between amending or repealing an initiated law. In Warren v. Thomas, 568 P.2d 400 (1977), the court considered whether legislative amendments to AS 39.50, the conflict of interest law which was enacted by initiative, were so substantial as to constitute a repeal of the initiative. The court held that although there were considerable language changes made by the amendments, they did not rise to the level of a legislative repeal. The court, citing Warren v. Boucher, 543 P.2d 731 (1975), stated:

The central issue in the case at bar is whether the legislature has exceeded that broad power (to amend an initiative) by passing an amendment which so vitiates the initiative as to "constitute its repeal." Id at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely "housekeeping," and that the amendments to AS 39.50 amount to a repeal of the law. We disagree. "(A)n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Sup'rs of Los Angeles County, 110 Cal.App.2d 623, 243 P.2d 38, 42 (1952) . . .; The implied repeal of an act is disfavored and will be limited to that which is necessary to carry out the intent of the legislature. (Citations omitted). In the case at bar, one section and two subsections were expressly repealed in 1975 when the legislature amended the initiated law. Sec. 26, ch. 25, SLA 1975.

Other sections were impliedly repealed by virtue of inconsistent amendatory provisions. However, this does not necessarily mean that the act as a whole was repealed. When AS 39.50 was amended certain of its provisions or portions thereof were repealed and reenacted

in a modified form. Where it is reasonable to do so, these provisions are considered to be a continuation of the original law which is to be construed with amendments. (Citations omitted.)

Of course there remains the question whether the amendments so emasculate the law that it is effectively repealed. We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant. See AS 39.50.060(a) and AS 39.50.070. Finally, the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure. Id at 403.

If the legislative compensation initiative is adopted, the legislature may amend it at any time but must wait two years before substantially changing it. The question of whether a change acts as an amendment or as a repeal of the initiated law would turn on how drastic the change was when considered in the context of the initiative as a whole. Since the initiative in question is itself a fairly short, straightforward document, it leaves less room for amendment than did the more complicated campaign financing initiative which was the basis of the Thomas and Boucher cases.

3. If the legislature enacts legislation establishing a commission to set legislative compensation before the initiative election, what effect will that have on the initiative petition?

Article XI, section 4 of the Alaska Constitution states that

If, before the election (on an initiative), substantially the same measure has been enacted, the petition is void.

The question, then, is whether legislation implementing a compensation commission is substantially the same as the initiative. The initiative is straightforward. It reinstates the provisions for legislative salaries and per diem

that the legislature changed in 1983. Section 1 reenacts provisions for payment of per diem; section 2 reduces legislative salaries from range 22 to range 10; and section 3 requires the reporting of payments to legislators for salaries, per diem and additional allowances.

Creation of a legislative compensation commission would not have an effect "substantially the same as" the enactment of the initiative petition. The commission would presumably be given authority to determine the appropriate level of legislative salaries and allowances.

In Warren v. Boucher, 543 P.2d 731, (1975), the Alaska Supreme Court found that an initiative regarding campaign financing was substantially the same as an act that the legislature passed in the session following the filing of the petition. The court said

If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative. (Emphasis added) Id at 736.

Boucher was decided by a 3 - 2 majority, with a strong dissent finding that the measures were not substantially similar.

In contrast, the intent of the initiative here is to reduce legislator's salaries to the 1983 level. An act establishing a compensation commission would not intend the same result necessarily. The two measures are dissimilar and therefore the initiative would still be placed before the voters for their consideration.

4. What provisions in the initiative could be changed in legislation adopted next session without removing the legislation from being "substantially similar" to the initiative?

Senator Mitch Abood  
Page 5  
August 26, 1985

Since the initiative is uncomplicated, very few changes could be made to its provisions to retain "substantial similarity." The legislature could certainly make changes to the language to conform the style to the drafting manual and also could make minor changes (such as adding to subsection (d) of section 1 that in no case could a legislator receive more than the appropriate per diem rate for expenses) or to section 3's system of reporting (changing dates, for example, or the organization of the report) as long as the basic information sought by the initiative continued to be included.

A change of the salary range set in section 2 of the initiative would be riskier. The section could not be less complicated. While the court will consider the entire package of the initiative, clearly section 2 is the centerpiece and evaluation of the complexity and of the intended substance must begin with it. Even a change of one salary range might be found unjustified.

5. If the legislature enacts legislation "substantially similar" to the initiative, thereby removing the initiative from the ballot, what restrictions are there on subsequent legislation concerning legislative compensation.

If the initiative does not pass, either because the legislature enacts measures found by the lieutenant governor to be substantially similar to the subject of the initiative or because the voters decide against the merits of the initiative, then the legislature may act in this subject area without regard to the proposed initiative. There would be no restrictions on subsequent legislation.

If I can be of further assistance please advise.

TC:lmb  
L5/010

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 2, 1986

SUBJECT: State officers compensation commissio<sup>n</sup> and  
Legislative salaries  
(SCS CSHJR 54(State Affairs))  
(SCS CSHB 454 (State Affairs))

TO: Senator Mitch Abood  
Chairman, Senate State Affairs Committee

FROM: Teresa B. Cramer *IBC*  
Legislative Counsel

Enclosed are the draft Committee Substitutes you requested. In SCS CSHJR 54, the committee requested one change that the draft does not include. On page 1, line 24, the committee changed "may" to "shall." The existing clause reads:

the legislature may by law provide that the committee may establish and revise the compensation of those state officers.

The amended clause would have read:

the legislature shall by law provide that the committee may establish ...

The effect of the proposed change is to require that the legislature enact legislation for the committee to "establish and revise the compensation of those state officers." This appears to be directly contrary to the committee's intent as reflected in the minutes to the meeting of March 20, 1986. The goal of the amendment, as stated at tape one, side one, number 602, was to ensure

that the legislature should retain the procedures by law to provide that the commission may establish and revise the compensation of other state officers.

I have therefore not made this amendment.

Senator Mitch Abood  
Page 2  
April 2, 1986

In incorporating CSHB 48 (the legislative salary bill) into SCS CSHB 454 (the state officers compensation commission bill), I removed the dates from the body of the statutes and made the sections effective January 19, 1987. HB 454 has effective dates already so there is nothing to be gained by placing the date in the body of the statute. This change has no substantive effect.

If I may be of further assistance, please advise.

TC:mkr  
m4:058

Enclosures

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 11, 1986

SUBJECT: Constitutional Amendment to establish a state  
officers compensation commission  
(SCS CSHJR 54 (State Affairs))

TO: Senator Mitch Abood  
Chairman, State Affairs Committee

FROM: Teresa B. Cramer *TBC*  
Legislative Counsel

Enclosed is the draft Committee Substitute you requested. Because the scope of the commission's authority has been narrowed to setting the compensation of legislators only, it would be appropriate to change the commission's name to Commission on Compensation of Legislators.

You asked whether it would be appropriate to draft a proposed amendment that asked the voters both whether to amend the constitution and which officers should be under the commission's authority. In my opinion, an amendment that proposed alternatives for the voters to choose between at the same time that they considered whether or not to adopt the amendment in any form would probably be found ineffective to amend the Alaska Constitution under Article XIII, Section 1.

An alternative would be to offer two different amendments to the voters, one that created a compensation commission to consider legislative salaries only, and a second that created a compensation commission to consider the compensation of a list of state officers. This could lead to difficulties if both amendments were adopted by the voters.

Senator Mitch Abood  
Page 2  
March 11, 1986

A third approach would be to redraft the resolution your committee is now considering to require that the commission address the compensation of legislators and to permit the legislature to include other state officers within the jurisdiction of the commission by law. This is the approach I recommend.

If I may be of further assistance, please advise.

TC:mkr  
m3/146

Enclosure

Original sponsor: Larson/Legislative Salaries

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE  
2 SENATE CS FOR CS FOR HOUSE JOINT RESOLUTION NO. 54 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 Proposing amendments to the Constitution  
6 of the State of Alaska establishing a  
7 state officers compensation commission.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. Article XII, Constitution of the State of Alaska, is  
10 amended by adding a new section to read:

11 SECTION 14. STATE OFFICERS COMPENSATION COMMISSION. The state  
12 officers compensation commission shall consist of seven members ap-  
13 pointed by the governor and subject to confirmation by a majority of  
14 the members of the legislature in joint session. The commission may  
15 revise the salaries, benefits, and expense allowances of members of  
16 the legislature by submitting a report to the legislature. The sal-  
17 aries, benefits, and expense allowances established by the commission  
18 in the report take effect on the first day of the next regular legis-  
19 lative session after the report is submitted to the legislature.

20 \* Sec. 2. Article XV, Constitution of the State of Alaska, is amended  
21 by adding a new section to read:

22 SECTION 29. STATE OFFICERS COMPENSATION COMMISSION. If the 1986  
23 amendment creating the state officers compensation commission (art.  
24 XII, sec. 14) is adopted, the members of the state officers compen-  
25 sation commission appointed under AS 39.23.200 shall become the mem-  
26 bers of the state officers compensation commission under art. XII,  
27 sec. 14, and any action taken by the commission under AS 39.23.200  
28 shall be considered an action taken by the commission under art. XII,  
29 sec. 14.

1       \* Sec. 3. The amendments proposed by this resolution shall be placed  
2 before the voters of the state at the next general election in conformity  
3 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
4 tion laws of the state.

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# Alaska State Legislature

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(907) 274-2843

IN SESSION:  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4714



Senator Mitch Abud  
CHAIRMAN

## Senate Committee on State Affairs

3/14/86

### SUMMARY OF AMENDMENTS MADE TO CSHJR 54 (FINANCE)

1. Page 1, lines 16-17. After "legislature" delete ", the governor, lieutenant governor, justices and judges of the court system, and the head of each principal department,"
2. Page 1, lines 21-25. After "legislature." delete "However, the legislature may reject any of the salaries, benefits, or expense allowances by a concurrent resolution adopted by two-thirds of the members in each house of the legislature. The legislature shall implement this section by law."

ce  
7/11

\* House Finance Committee 7/11/85 - 7/11/85 - 7/11/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 2/10/86

REQUEST

FISCAL DETAIL

Bill/Resolution No.: CSHJR 54 (Fin)  
Title: State Officers' Compensation Commission

Agency Affected: Governor's Office  
BRU: Lt. Governor's Office

Sponsor: Larson by request  
Requestor: House Finance Committee  
Date of Request: 2/10/86

Components: Div. of Elections

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0				
TRAVEL		0				
CONTRACTUAL		0				
SUPPLIES		0				
EQUIPMENT		0				
LAND & STRUCTURES		0				
GRANTS, CLAIMS		0				
MISCELLANEOUS		0				
TOTAL OPERATING		0				

CAPITAL		0				
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REVENUE		0				
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FUNDING : (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER		0				
TOTAL		0				

POSITIONS :

FULL-TIME		0				
PART-TIME		0				
TEMPORARY		0				

ANALYSIS : Attach a separate page if necessary

Any funds needed to change the ballot form can be absorbed in the Division's FY 87 budget.

APA

Prepared by: Al Adams, Chair  
Division: House Finance Committee

Phone: 465-3706  
Date: 2/10/86

Approved by Commissioner: \_\_\_\_\_  
Agency: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

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