

HB 1209

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 20, 1991

FURTHER REFERRALS:

Date of Committee Action: 4/16/91

The FINANCE Committee considered:

HB 129

HOUSE BILL NO. 129

PUBLIC OFFICERS COMPENSATION COMMISSION

"An Act establishing the Public Officers Compensation Commission; relating to the compensation of the governor, lieutenant governor, members of the legislature, heads of the principal departments of the executive branch of government, supreme court justices, judges of the court of appeals, judges of the superior court, and district court judges; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 129 (JUD) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) OFFICE of GOV PD 3149

zero fiscal note _____

zero fiscal note(s) ALASKA COURT Sys PROJECT
D/ Administration PD 3149

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Mike Swane</u> <small>NAVARRE</small>		<u>Ronald L. ...</u> <small>HURSON</small>		X	
<u>Mike Kiper</u> <small>KESNEN</small>	✓	<u>Bob ...</u> <small>SEAS</small>		X	
<u>Eileen P. Maclean</u> <small>MACLEAN</small>	X	<u>Tan ...</u> <small>BRAD</small>		X	
<u>Gene ...</u> <small>JACK</small>	X	<u>...</u> <small>BURNS</small>			
		<u>2000 F ...</u> <small>BURNS</small>		✓	

Mike Swane NAVARRE Eileen P. Maclean MACLEAN
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 1
Bill Version: CSHB 129(STA)
(H) Publish Date: 3/4/91

Revision Date: _____ Department Affected: Office of the Governor
Title: "An Act establishing the Public Officers Compensation Commission;..." BRU: Commissions and Special Offices
Component: Public Officers Compensation Commission
Sponsor: House Rules Committee
Requestor: House State Affairs

COMPONENT SERIAL NO.

N	A		
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	24.8	-0-	7.4	-0-	7.4	-0-
CONTRACTUAL	36.1	7.2	33.9	7.2	33.9	7.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	60.9	7.2	41.3	7.2	41.3	7.2

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	60.9	7.2	41.3	7.2	41.3	7.2
FEDERAL FUNDS						
OTHER						
TOTAL	60.9	7.2	41.3	7.2	41.3	7.2

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME						
TEMPORARY						

Estimate of current year impact: none

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis

Prepared By: Michael A. Nizich, Director Phone: 465-3616
Division: Administrative Services Date: _____
Approved by Commissioner: D. Max Hodel, Chief of Staff
Agency: Office of the Governor Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Proposed legislation replaces State Officers Compensation Commission. Fiscal note assumptions are based on the activity of the State Officers Compensation Commission which held four meetings in first fiscal year for organizational and first report purposes. Subsequent years reflect "every other year" meeting and report to the legislature.

PERSONAL SERVICES -0-

Fiscal note assumes staff and related expenses will be provided by the Department of Administration per Sec. 14 AS 39.23.230(a)

TRAVEL 24.8

Fiscal note assumes 4 meetings and two teleconferences for public comment prior to Commission report/order in the first fiscal year. Subsequent years reflect no travel activity during off-reporting years and one meeting with two public teleconferences each reporting year. Travel and per diem calculations figures average air fare and per diem expenses for the seven public members.

First Year

Public members:

Airfare	3856 x 4 =	15,424	
Per diem	1470 x 4 =	5,880	21,304

Administrative travel:

Airfare	479 x 3 =	1,437	
Per diem	210 x 3 =	630	2,067

Teleconference per diem for Commission members	1,400		1,400
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TOTAL TRAVEL: 24,771

"Every Other" year

Public members:

Airfare	3856 x 1 =	3,856	
Per diem (per diem based on 3 day meeting)	2100 x 1 =	2,100	5,956

Teleconference per diem for Commission members	1,400		1,400
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TOTAL TRAVEL: 7,356

CONTRACTUAL 36.1

Contractual calculations vary according to reporting/non-reporting years.

First year:

Communication:

Teleconference charges -- 2 @ 4740	9,480	
Postage -- 300/mo x 12	3,600	13,080

Transportation:

Freight and express charges -- 150/mo x 12		1,800
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Advertising, Printing & Binding:

Subscriptions	250	
Advertising -- 6 meetings x 750	4,500	
Annual report	15,000	
Forms, misc.	1,500	21,250

TOTAL CONTRACTUAL: 36,130

Off-reporting year:

Communication:

Postage -- 300/mo x 12		3,600
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Transportation:

Freight and express charges -- 150/mo x 12		1,800
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Advertising, Printing & Binding:

Subscriptions	250	
Forms, misc.	1,500	

TOTAL CONTRACTUAL: 7,150

CONTRACTUAL (continued)

Reporting year:

Communication:

Teleconference charges -- 2 @ 4740	9,480	
Postage -- 300/mo x 12	3,600	13,080

Transportation:

Freight and express charges -- 150/mo x 12		1,800
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Advertising, Printing & Binding:

Subscriptions	250	
Advertising -- 3 meetings x 750	2,250	
Annual report	15,000	
Forms, misc.	1,500	19,000

TOTAL CONTRACTUAL:		33,880
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FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 2
Bill Version: CSHB 129 (STA)
(H) Publish Date: 3/4/91

Revision Date: _____

Department Affected: Administration

Title: Public Officers Compensation Commission

BRU: Personnel

Sponsor: Rules by Request (of Court System)

Component: Personnel

Requestor: _____

COMPONENT SERIAL NO.

		5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Experience with the two earlier compensation commissions indicate that the level of assistance requested is minor, and consists of readily available information. The added costs have been, and we expect them to continue to be, negligible.

Prepared by: David K. F. Otto *KFO*

Phone: 465-4430

Division: Personnel

Date: February 19, 1991

Approved by Commissioner: Millet Keller *Millet Keller*

Agency: Administration

Date: 2/21/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 3
Bill Version: CSHB 129 (STA)
(H) Publish Date: 3/4/91

Revision Date: _____ Department Affected: Alaska Court System
Title: An Act establishing the Public Officers Compensation Commission... BRU: _____
Sponsor: By Rules Committee by request Components: _____
Requestor: State Affairs COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *C. S. Christensen III* Phone: 264-8228
Division: Alaska Court System Date: 02/14/91

Approved by: Arthur H. Snowden, II, Administrative Director *Stephanie Cole for*
Agency: Alaska Court System Date: 02/14/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CS FOR HOUSE BILL NO. 129 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/20/91
Referred: Finance

Sponsors: HOUSE RULES COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Public Officers Compensation Commission; relating to the
2 compensation of the governor, lieutenant governor, members of the legislature, heads of the
3 principal departments of the executive branch of government, supreme court justices, judges
4 of the court of appeals, judges of the superior court, and district court judges; and
5 providing for an effective date."

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 * Section 1. AS 22.05.140(a) is repealed and reenacted to read:

8 (a) The compensation of a supreme court justice shall be established by order of the
9 Public Officers Compensation Commission.

10 * Sec. 2. AS 22.07.090(a) is repealed and reenacted to read:

11 (a) The compensation of a judge of the court of appeals shall be established by order of
12 the Public Officers Compensation Commission. The compensation of a judge may not be
13 diminished during the term of office, unless by general law applying to all salaried officers of

1 the state.

2 * Sec. 3. AS 22.10.190(a) is repealed and reenacted to read:

3 (a) The compensation of a superior court judge shall be established by order of the Public
4 Officers Compensation Commission.

5 * Sec. 4. AS 22.15.220(a) is repealed and reenacted to read:

6 (a) The compensation of a district court judge shall be established by order of the Public
7 Officers Compensation Commission.

8 * Sec. 5. AS 22.15.230 is amended to read:

9 Sec. 22.15.230. ADDITIONAL COMPENSATION. Subject to rule of the supreme court,
10 a [DISTRICT JUDGE OR] magistrate shall receive a per diem allowance and a transportation
11 allowance commensurate with that authorized for other state employees.

12 * Sec. 6. AS 24.10.100 is repealed and reenacted to read:

13 Sec. 24.10.100 SALARY OF LEGISLATORS. The salary for each member of the
14 legislature shall be established by order of the Public Officers Compensation Commission. The
15 commission may authorize per diem for legislators. The commission may also authorize
16 additional compensation for the president of the senate and the speaker of the house of
17 representatives.

18 * Sec. 7. AS 24.10.120 is amended to read:

19 Sec. 24.10.120. METHOD OF PAYMENT. Salaries, per diem if authorized by the
20 Public Officers Compensation Commission, and additional allowances for members of the
21 legislature shall be paid by warrants drawn on vouchers approved by the legislative fiscal officer.
22 The legislative fiscal officer shall, by January 31 of each year, file with the legislature's fiscal
23 office a report of all vouchers approved for payment under this section during the preceding
24 calendar year. The report must include [SHALL PROVIDE], by legislator, the date of each
25 voucher, the amount paid, and the basis for approval for payment. The report is a public record.

26 * Sec. 8. AS 39.20.010 is repealed and reenacted to read:

27 Sec. 39.20.010. COMPENSATION OF GOVERNOR. The compensation of the governor
28 shall be established by order of the Public Officers Compensation Commission.

29 * Sec. 9. AS 39.20.030 is repealed and reenacted to read:

30 Sec. 39.20.030. COMPENSATION OF LIEUTENANT GOVERNOR. The compensation
31 of the lieutenant governor shall be established by order of the Public Officers Compensation

1 Commission.

2 * Sec. 10. AS 39.20.050 is amended to read:

3 Sec. 39.20.050. EXCLUSIVE COMPENSATION. The compensation established by
4 order of the Public Officers Compensation Commission and other benefits established
5 [FIXED] by law for the governor and lieutenant governor are compensation [IS] in full for all
6 services rendered by each of them in any official capacity or employment whatsoever during their
7 respective terms of office, and shall be paid throughout their respective terms of office unless the
8 office becomes vacant.

9 * Sec. 11. AS 39.20.080(a) is repealed and reenacted to read:

10 (a) The compensation of the head of each principal executive department shall be
11 established by order of the Public Officers Compensation Commission.

12 * Sec. 12. AS 39.23 is amended by adding a new section to read:

13 Sec. 39.23.201. COMPENSATION COMMISSION ESTABLISHED. (a) The Public
14 Officers Compensation Commission is established in the Office of the Governor. The
15 commission is composed of seven members appointed by the governor. Members serve staggered
16 terms of four years. Commission membership shall include at least one business executive, one
17 person with experience in public administration, one representative of a nonpartisan voters'
18 organization, one representative of a labor organization, and one lawyer. A vacancy shall be
19 filled for the balance of the unexpired term. A commission member may serve no more than two
20 complete consecutive terms.

21 (b) The commission shall elect a member to chair its meetings. A majority of the
22 commission members constitutes a quorum to transact business. The affirmative vote of four
23 members is required to approve the commission's report or an order on compensation.

24 (c) The commission shall meet every other year at the call of the chair. Notice of a
25 meeting shall be mailed to each member at least 15 days before the date scheduled for the
26 meeting.

27 (d) The commission shall hold a public hearing to discuss its findings before submitting
28 its report or an order to the legislature.

29 * Sec. 13. AS 39.23.230(a) is amended to read:

30 (a) If requested by the commission, the Department of Administration [LEGISLATIVE
31 AFFAIRS AGENCY] shall provide staff for the commission.

1 * Sec. 14. AS 39.23 is amended by adding a new section to read:

2 Sec. 39.23.241. DUTIES OF THE COMMISSION. (a) The commission shall review
3 the compensation of the governor, lieutenant governor, members of the legislature, heads of the
4 principal departments of the executive branch of state government, supreme court justices, judges
5 of the court of appeals, judges of the superior court, and district court judges. The commission
6 shall submit a report on its findings every odd-numbered year no later than the 10th day of the
7 regular session of the legislature. A commission member who does not concur in the report may
8 file a minority report.

9 (b) The commission may submit an order with the report making changes to the
10 compensation of a public officer. Before submitting a report or order on compensation, the
11 commission shall give reasonable public notice of its preliminary findings, solicit public
12 comments, and give due regard to the public comments.

13 (c) An order changing the compensation of a public officer does not take effect if a bill
14 disapproving the order in its entirety is enacted into law within 60 days after the order is
15 submitted to the legislature. Unless disapproved, an order increasing the compensation of a
16 public officer is subject to funding through legislative appropriation and takes effect on the later
17 of January 1 of the next calendar year and the effective date of the first appropriation to fund the
18 increase. Unless disapproved and except as provided in (d) of this section, an order decreasing
19 the compensation of a public officer takes effect January 1 of the next calendar year.

20 (d) An order decreasing the compensation of persons currently holding office as the
21 governor, lieutenant governor, justices of the supreme court, or judges of the court of appeals,
22 superior court, or district court may not take effect until the later of January 1 of the next
23 calendar year and the effective date of a general law applying to all salaried officers of the state
24 that diminishes compensation with which the order is consistent.

25 * Sec. 15. AS 39.23.250 is amended to read:

26 Sec. 39.23.250. FILING WITH LIEUTENANT GOVERNOR AND CERTIFICATION.
27 The commission shall, upon transmitting an order on [ITS FINAL RECOMMENDATIONS FOR
28 THE] compensation [OF LEGISLATORS] to the legislature, file the order
29 [RECOMMENDATIONS] in the office of the lieutenant governor. When the order becomes
30 [RECOMMENDATIONS BECOME] effective, the commission shall certify the copy of the
31 order [RECOMMENDATIONS] on file in the office of the lieutenant governor.

1 * Sec. 16. AS 39.23.260 is amended to read:

2 Sec. 39.23.260. POLICY OF THE LEGISLATURE. It is the policy of the legislature
3 that the commission determine an equitable rate and form of compensation [, BENEFITS, AND
4 ALLOWANCES] for the governor, lieutenant governor, members of the legislature, heads
5 of the principal departments of the executive branch of state government, supreme court
6 justices, judges of the court of appeals, judges of the superior court, and district court
7 judges. In determining the compensation for each office, the commission shall consider the
8 following factors:

- 9 (1) the skill required;
10 (2) the time required;
11 (3) the opportunity for other earned income;
12 (4) the value of public services as performed in other states and in the federal
13 government;
14 (5) the value of similar services when performed in the private sector of this
15 state and in other states based on the responsibility and discretion required in the office;
16 (6) the reasonable expenses incurred in performing the public service;
17 (7) the percentage change in the Consumer Price Index for Anchorage,
18 Alaska, as determined by the United States Department of Labor, Bureau of Labor
19 Statistics since the last compensation adjustment;
20 (8) the compensation presently received by the public officers and all other
21 benefits received;
22 (9) the interests and welfare of the public and the financial ability of the state
23 to meet the costs;
24 (10) the geographic cost-of-living based on a public officer's primary place
25 of assignment;
26 (11) the cost-of-living differential between Anchorage, Alaska, and other
27 locations in the United States; and
28 (12) other factors that are normally or traditionally considered in the
29 determination of compensation [LEGISLATORS].

30 * Sec. 17. AS 39.23 is amended by adding a new section to read:

31 Sec. 39.23.401. DEFINITIONS. In this chapter,

1 (1) "commission" means the Public Officers Compensation Commission;
2 (2) "compensation" means the salary and per diem paid a public officer.

3 * Sec. 18. AS 22.05.140(c); AS 22.10.190(c); and AS 22.15.220(d) are repealed.
4 * Sec. 19. AS 39.23.200, 39.23.240, and 39.23.400 are repealed.
5 * Sec. 20. AS 24.10.101 and 24.10.105 are repealed.
6 * Sec. 21. Notwithstanding AS 39.05.055(5) and the provisions of AS 39.23.201, enacted by sec. 12
7 of this Act, one of the initial members appointed to the Public Officers Compensation Commission shall
8 serve a one-year term, two members shall serve two-year terms, two members shall serve three-year
9 terms, and two members shall serve four-year terms.
10 * Sec. 22. Notwithstanding the requirement in AS 39.23.201(c), enacted by sec. 12 of this Act, that
11 the commission meet every other year, and the requirement in AS 39.23.241(a), enacted by sec. 14 of
12 this Act, that the Public Officers Compensation Commission submit reports in odd-numbered years, the
13 commission shall submit its first report concerning the compensation of public officers no later than the
14 10th day of the regular session of the legislature immediately following the enactment of this Act.
15 Thereafter, the commission shall meet in even-numbered years under AS 39.23.201(c) and submit reports
16 in odd-numbered years under AS 39.23.241(a).
17 * Sec. 23. When the Public Officers Compensation Commission files its first order changing the
18 compensation of justices of the supreme court or judges of the court of appeals, superior court, or district
19 court, it shall address the compensation of all of those public offices in the order. The commission shall
20 include both the governor and the lieutenant governor in the first order it issues addressing the
21 compensation of either of those public offices.
22 * Sec. 24. Sections 1 - 5 and 18 of this Act take effect on the date that the first order changing the
23 compensation of justices and judges issued by the Public Officers Compensation Commission takes
24 effect.
25 * Sec. 25. Sections 6, 7, and 20 of this Act take effect on the date that the first order changing the
26 compensation of members of the legislature issued by the Public Officers Compensation Commission
27 takes effect.
28 * Sec. 26. Sections 8 - 10 of this Act take effect on the date that the first order changing the
29 compensation of the governor and the lieutenant governor issued by the Public Officers Compensation
30 Commission takes effect.
31 * Sec. 27. Section 11 of this Act takes effect on the date that the first order changing the

1 compensation of the heads of the principal departments of the executive branch of state government
2 issued by the Public Officers Compensation Commission takes effect.

3 * Sec. 28. Sections 12 - 17, 19, and 21 - 23 of this Act take effect immediately under
4 AS 01.10.070(c).

**1991 LEGISLATION
POSITION PAPER
DEPARTMENT OF ADMINISTRATION**

Division Labor Relations **Bill Number** HB 129

Bill Title An Act Establishing the Public Officers Compensation Commission

Position Statement: Explain briefly what bill does, its impacts and Department's position, i.e., a) support, b) do not support, c) neutral or d) oppose.

The bill effectively transforms the current Public Officers Compensation Commission (POCC) from an advisory body on salaries for various public officers, into a formal salary setting body whose pay orders are subject to express legislative rejection but do not require express approval before taking effect. The POCC would set salaries for legislators, judges, justices, magistrates, the Governor, the Lt. Governor, and all commissioners; none of these officers are subject to collective bargaining. Nevertheless, the de facto ability of the POCC to grant pay raises to upper management may set undesirable precedent for wage negotiations with collective bargaining units. The factors to be used by the POCC in salary setting are largely the same factors used in bargaining. Consequently, there exists a strong possibility of conflicting wage-setting policies, with deleterious effects on the employers' position as the bargaining table.

We oppose this proposal.

APPROVED:

Director Bruce Cummings **Division** Labor Relations

Signature  **Date** 2/15/91

Commissioner Millett Keller

Signature  **Date** 2/19/91

(For more information, call Barbara Pritchett 465-2200)

Rev. 01/28/91

**1991 LEGISLATION
POSITION PAPER
DEPARTMENT OF ADMINISTRATION**

Division Personnel Bill Number HB129

Bill Title Public Officers Compensation Commission

Position Statement: Explain briefly what bill does, its impacts and Department's position, i.e. a) support, b) do not support, c) neutral or d) oppose.

The Department of Administration opposes expansion of the authority of the Public Officers Compensation Commission.

House Bill 129 would expand the authority of the renamed Public Officers Compensation Commission. The new authority includes setting the compensation of the governor, lieutenant governor, members of the legislature, heads of principal departments of the executive branch, and all judges and justices of the Alaska Court System. Currently, the commission can issue only findings and recommendations. Under HB 129, the commission would issue an order that in the absence of legislative action changes the compensation of the Public Officers listed in the bill. The Commission's order becomes effective 60 days after submission to the legislature unless a legislative bill disapproving the order in its entirety is enacted into law before the effective date.

The intent of this bill is to assign responsibility for setting the salaries of elected and top level officials to the Commission. It will not work. The final authority for approving or disapproving changes to the salary structure still rests with the legislature. The expansion of the authority of the Public Officers Compensation Commission does not change that fact. Elected officials should vote on and assume direct responsibility for increases to the salaries of the positions that they hold.

We support the current role served by the Commission.

APPROVED:

Director David K. F. Otto Division Director

Signature *David K. F. Otto* Date 2-19-91

Commissioner Millett Keller

Signature *Millett Keller* Date 2/19/91

(For more information, call Barbara Pritchett 465-2200)

Rev. 1/23/91

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 8, 1991

SUBJECT: Public Officers Compensation Commission (CSHB 129(STA))

TO: Representative Dave Donley, Chair
House Judiciary Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have asked whether CSHB 129 (State Affairs), creating the Public Officers Compensation Commission, violates the state constitution.

In my opinion, the bill does not violate the state constitution although there are situations in which actions taken under the bill could pose legal questions.

1. Power of appropriation.

The bill creates a commission which is empowered to establish the compensation of public officers. Under section 14, enacting AS 39.23.241(c), an order of the commission making changes to compensation becomes effective unless the legislature enacts a bill disapproving the order before the effective date of the change to compensation. However, the bill does not address what happens if the legislature does not disapprove the order but also does not appropriate the additional money necessary to fund an increase to compensation of an office.

The power of appropriation is given to the legislature by the state constitution. Art. 9, sec. 13. Legislation cannot diminish that power, so the commission's action cannot substitute for an appropriation. In Public Employees, Local 71 v. State, 775 P.2d 1062 (Alaska 1989), the court construed AS 23.40.215(a), making the monetary terms of state employee collective bargaining agreements subject to legislative approval, and noted that under the state constitution, funding of an agreement was constitutionally relegated to the legislature even in the absence of the statute.

If an order increases compensation but money is not appropriated to fund the increase, the public officer would be entitled to compensation at the new, higher,

Representative Dave Donley

March 8, 1991

Page 2

level. However, neither the officer nor the compensation commission could force the legislature to appropriate the additional sums necessary, with the result that the state would owe the public officer a debt whose payment would be subject to legislative appropriation at the discretion of the legislature.

To avoid creating a debt to a public officer if the legislature fails to appropriate for an increase to compensation, language could be inserted into the bill stating that a change to compensation was subject to legislative appropriation. Similar language exists in AS 23.40.215(a) (the Public Employment Relations Act) for public employee collective bargaining contracts. In the alternative, to ensure that an order of the commission is funded, a constitutional amendment would be necessary, amending the legislature's power to appropriate and the governor's power to reduce or veto appropriations.

2. Diminishment of Compensation.

There is another limitation on the power of the Public Officers Compensation Commission to establish salaries. Under art. 3, sec. 15 and art. 4, sec. 13 of the state constitution, the compensation of the governor and lieutenant governor and of justices and judges may not be diminished during their terms of office except by general law applying to all salaried officers of the state. Therefore, the commission would be unable to reduce the compensation for the governor, lieutenant governor, justices, and judges currently in office unless the legislature had enacted legislation reducing salaries generally.

If I may be of further assistance, please let me know.

TC:pl

91-139.plm

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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March 12, 1991

Hon. Dave Donley, Chair
House Judiciary Committee
Room 120 - Capitol
Juneau, Alaska 99811

Re: HB129

Dear Representative Donley:

Please find enclosed proposed amendments to the above bill along the lines recommended by our department's former regulations and legislation attorney, Ron Lorensen.

We additionally note that we are not convinced that the deferral of the duty to set the salaries of the governor, lieutenant governor, and judges to the commission is appropriate under Article III, sec. 15 and Article IV, sec. 13 of the Alaska Constitution, despite the addition of language which assures that the appropriation and veto process is not avoided. However, we understand you plan to proceed on the advice of legislative and court system counsel that there are no constitutional problems with the bill. For that reason, and since we understand that you want to pass the bill out of your committee today, we have not prepared an opinion to supplement Mr. Lorensen's notes on these subjects, which we supplied to the state affairs committee, and attach here.

Hon. Dave Donley, Chair
House Judiciary Committee

March 13, 1991
Page 2

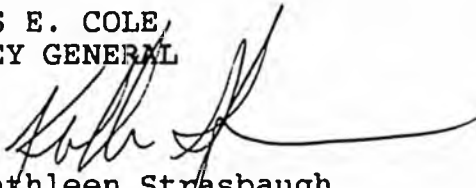
If you do not receive the amendments before you pass HB129 out of your committee, we would very much appreciate it if you would send this correspondence and the amendments along to the next committee to which the bill has been referred.

Thank you for the opportunity to comment.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

By:


Kathleen Strasbaugh
Assistant Attorney General

KS:lmk

Enclosure

cc w/o encl: Jeffrey W. Bush, Assistant Attorney General
Regulations and Legislation Section
Department of Law

Amendment proposed by the Department of Law

Add to Section 15 of the bill, proposed amendments to AS 39.23.250, an (a) before "The commission" on page 4, line 27, and add a new subsection (b) to read as follows:

(b) The commission's adoption of an order is not subject to the Administrative Procedures Act. The order shall be published in the Alaska Administrative Register and Code for informational purposes.

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From: WCMC002 --JDCVM1
To: WPFCKJIM --JDCVM1

and time 02/20/91 10:13:38
WPFCKJS --JDCVM1

From: Ron Lorensen
Asst. A.G.

Leg. & Regs., Juneau AGO

Subject: HB 129--Public Officers Compensation Commission

FYI. I assume one of you will end up following this bill after next week.

I attended House State Affairs committee hearing on the bill this morning. I didn't testify, but they had a copy of my profs note. Chris Christenson, staff attorney for the Court System, testified and addressed each of these points. He acknowledged that point 2 (can't bind future legislatures) was correct. On point 1, he said he'd done Westlaw research trying to find cases where courts have said "by law" means only in statute, rather than through a statutory delegation to some other body or official. Said he didn't find any cases saying "by law" means only by (in) statute, but did find several cases that said a legislative delegation to do or act on a particular matter was okay, even though it was required to be done "by law".

The committee held the bill over for futher consideration. The chairman (Kubina) said he understood the gov was opposed to the bill because it circumvented his ability to veto legislation that set salaries. Kubina asked Christenson whether it would be okay to give the governor some kind of veto

After the hearing I talked to Christenson for a couple minutes. I told him I didn't have firm opinions on these questions, but was just issue spotting for the gov's office. I told him I thought (and would have suggested, if asked to testify) that the bill should include a provision requiring the commission's salary orders to be published in the AAC, even though they would not be subject to the AS 44.62 procedures--much the same as with the personnel rules. This would give the public a specific place to look to find salaries for covered officials and would also lend a little more weight to their legal standing.

Thanks. Ron

*** Forwarding note from WCMCO02 --JDCVM1 02/19/91 16:44 ***

To: GASCBFA --JDCVM1

From: Ron Lorensen

Asst. A.G.

PF1 Alternate PFs PF2 File NOTE PF3 Keep PF4 Erase PF5 Forward Note

PF6 Reply PF7 Resend PF8 Print PF9 Help PF10 Next PF11 Previous PF12 Return

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Asst. A.G.

Leg. & Regs., Juneau AGO

Subject: HB 129--Public Officers Compensation Commission

Here are the main legal (constitutional) issues I see raised by this bill:

1. The constitution specifically says that the compensation for the governor and lieutenant governor (art. III, sec. 15) and for judges (art. IV, sec. 13) are to be "prescribed by law". I think there is a good argument that this bill does not "prescribe their salaries by law", since it sets out a procedure for establishing salaries (formulation of salary orders by the commission) for the gov. lt gov. and judges that does not culminate in legislation which is enacted as LAW. This argument is strengthened by the fact that the procedure would circumvent the governor's ability to veto legislation enacted by the legislature. This infirmity does NOT apply to the procedure for setting salaries for commissioners or legislators, however.

2. There is also a very good argument that the procedure for establishing these salaries impermissably interferes with the powers of future legislatures. Under the bill, salary orders of the commission would become effective 60 days after they are submitted to the legislature, unless a bill disapproving the order(s) is enacted into law during that period. It's

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PF6 Reply PF7 Resend PF8 Print PF9 Help PF10 Next PF11 Previous PF12 Return

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disapproving the order(s) is enacted into law during that period. It's probably (see point three) permissible to set salaries in accordance with orders of the commission, so long as the legislature does not see fit to disapprove or change those salaries. BUT, to the extent the language of the bill is intended to result in a final salary that the legislature could not change after the 60 days has elapsed, it goes too far. One legislature can't bind or limit the power of a future legislature (the constitution can, of course), so salary orders of the commission would always be subject to being overridden by the legislature--no matter how long after they "take effect" under the bill.

3. There is also an issue of whether giving this commission the ability to set salaries for these public officials constitutes an impermissible delegation of legislative power. Although I think there is an issue on this point, I think the better answer is that it's okay because the bill does set out a pretty comprehensive list of standards or factors to be taken into account in arriving at compensation levels.

Those are the main issues I see in the short period of time I've had to look the bill over and think about it. Hope this helps. Bye.



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

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March 17, 1991

The Honorable Dave Donley
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

You have asked for comments on the concerns expressed by a representative of the Department of Law at the committee's March 12 hearing on HB 129. As I understand it, the department is not convinced that the delegation of legislative power made by that bill conforms with the Alaska Constitution.

Three jurisdictions have operated a compensation commission similar to that created by HB 129. A review of the case law confirms that a legislative body may delegate its power to set the salaries of certain public officials, even when the particular constitution requires that such salaries be prescribed "by law."

The Congress created the first such compensation commission with the Federal Salary Act of 1967, 2 U.S.C. § 351 et seq. This Act authorizes a commission to review the salaries of members of Congress, justices and judges, and certain officials of the executive branch. The commission's report is presented to the President, who makes salary recommendations to the Congress. From 1967 to 1985, the recommendations took effect if the Congress did not disapprove them within 30 days by single-house resolution. From 1985 to 1989, the method of disapproval was by joint resolution.

The Salary Act was upheld with respect to the setting of judicial salaries in Atkins v. United States, 556 F.2d 1028 (Ct.Cl. 1977), cert. denied, 434 U.S. 1009 (1978). In considering the delegation of this legislative function, the court stated:

Nonetheless, this particular power, though legislative in character, can be delegated under proper standards, at least so long as Congress retains the ultimate authority. . . . For both judicial and congressional compensation, we have no doubt of the validity of a hypothetical statute which established the same mechanism as the Salary Act but dispensed with the one-House veto, providing only a specified layover period to allow Congress to enact an overriding statute in ordinary course. . . . Accordingly, there is nothing invalid in the establishment by the Salary Act of an advisory Commission, or of the provisions for a presidential recommendation on salaries, for the layover period, for the overriding of the presidential recommendation by a regular statute, and for giving effect to the presidential proposal if Congress takes no action at all

Atkins, 556 F.2d at 1060.

While Atkins was concerned primarily with the delegation of the power to set judicial pay, two federal decisions have upheld the Salary Act with respect to congressional compensation. For our purposes, this is more significant in that the applicable provision of the United States Constitution requires congressional pay to be "ascertained by Law," much as the Alaska Constitution requires the salaries of the governor, lieutenant governor, and justices and judges to be "prescribed by law."

In Pressler v. Simon, 428 F.Supp. 302 (D.D.C. 1976), aff'd sub nom. Pressler v. Blumenthal, 434 U.S. 1028 (1978), plaintiff argued that the Salary Act violated Article I, Section 6, of the United States Constitution, which provides in pertinent part:

The Senators and Representatives shall receive a Compensation for their Services to be ascertained by Law,

Plaintiff contended that the phrase "to be ascertained by Law" constitutes a mandatory requirement that compensation be fixed by a law passed by Congress. In rejecting this argument, the court stated:

In the Salary Act it [Congress] has explicitly reserved the right to enact legislation fixing congressional compensation regardless of what recommendation it receives from the President. As already noted, it retains this right under the Adjustment Act by the use of its appropriation powers.

Pressler, 428 F.Supp. at 305. While these limitations are present in HB 129, it should be noted that the Pressler court also commented favorably on two features contained in the Salary Act that an Alaska law could not have, specifically a one-house veto and congressional representation on the commission. 428 F.Supp. at 305.

The court went on to state that the verb "ascertain" does not have such a narrow and limiting effect that it would prevent Congress from delegating its power in this area. As long as Congress retained the ultimate authority for determining what its members' salaries would be, members could be held accountable by the voters, which was the animating purpose behind the Ascertainment Clause. 428 F.Supp. 305, 306.

The most recent case upholding the Salary Act is Humphrey v. Baker, 848 F.2d 211 (D.C.C. 1988), cert. denied 488 U.S. 966 (1988). In that case, plaintiff challenged the Act following the 1985 amendments which eliminated the one-house veto and required a disapproving resolution passed by both bodies. Plaintiff's contentions were the same as raised in Pressler. In rejecting them, the court stated:

In our view, post-Pressler changes in the Salary Act have not altered in any significant fashion the system for setting Congressional salaries. . . . In short, those devices, in varying degrees, remain efficaciously available to Congress.

848 F.2d at 216. According to the court, those "devices" included significant checks in the form of the appropriation process, the disapproval mechanism, and the ability at any time to enact superceding legislation. In short, Congress had not delegated its final responsibility for the setting of congressional salaries. 848 F.2d at 215.

Two states, Delaware and Illinois, operate statutory compensation commissions that have the power to establish salaries. There are no reported cases addressing the Delaware statute. However, the Illinois courts have upheld the right of that state's general assembly to create a compensation commission that effectively establishes salaries.

The Illinois statute provides for a 12 member Compensation Review Board, appointed by the presiding officers and minority leaders of the house and senate. The board is charged with recommending compensation for members of the general assembly, judges, elected constitutional officers, and certain appointed officers. Recommendations are filed with the assembly every other year, and

take effect unless disapproved by a majority of the members of each house.

The Illinois Constitution is similar to the Alaska Constitution in providing that the salaries of judges and executive officers shall be "provided" or "established" "by law." (Ill. Const. 1970, art. VI, sec. 14; Ill. Const. 1970, art. V, sec. 21.)

The constitutionality of the board was upheld by the Illinois Supreme Court in Quinn v. Donnewald, 483 N.E.2d 216 (Ill. 1985). In that case, the court held that the general assembly could not delegate its general legislative powers to establish salaries. However, it found that the creation of the board did not amount to such a delegation. First, the court found that the board itself was created "by law," and this was enough to meet constitutional requirements that salaries be provided or established by law. 483 N.E.2d at 219, 220. Second, the power to recommend salaries was restricted by guidelines set forth by the assembly that the board had to follow. 483 N.E.2d at 220, 221. Third, the assembly retained the ultimate power over setting salaries by virtue of the legislative veto provision and, less relevantly, by the fact that it had to appropriate money to pay the salaries. 483 N.E.2d at 221.

While the Alaska Supreme Court has never addressed the specific delegation issue raised by HB 129, it has ruled that when the constitution requires a function to be performed "by law," it does not necessarily mean that the legislature is prohibited from delegating the function. Warren v. Boucher, 543 P.2d 731, 733 (Alaska 1975). While the legislature's right to delegate its power under such circumstances is not unlimited, a narrow delegation subject to appropriate review may be upheld where it would be impractical or cumbersome for the legislature to undertake the task in question. 543 P.2d at 734. The history of problems faced by the legislature in attempting to establish fair and reasonable salaries for its members and other public officers provides ample evidence of the impractical and cumbersome nature of the task.

It is reasonable to conclude that legislation creating a compensation commission that contained certain essential elements would withstand a legal challenge. First, an order of the commission setting salaries should not take effect until the legislature has had the opportunity to disapprove it. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980) would require that this disapproval be done by enactment of a law, not by resolution. Second, the legislature must retain the authority to change salaries on its own initiative. Since one legislature cannot bind another, this power could not in fact be taken away by legislation creating a compensation commission. Third, the

The Honorable Dave Donley
March 17, 1991
Page 5

legislation creating the commission must contain intelligible standards to delimit the commission's authority in setting compensation. HB 129 contains such standards. Fourth, the legislature must retain the power to appropriate money to pay salaries established by the commission. Again, this is not a power that could be taken away by legislation.

Please advise if you have any questions or comments.

Very truly yours,



C.S. Christensen III
Staff Counsel

CSC:bh