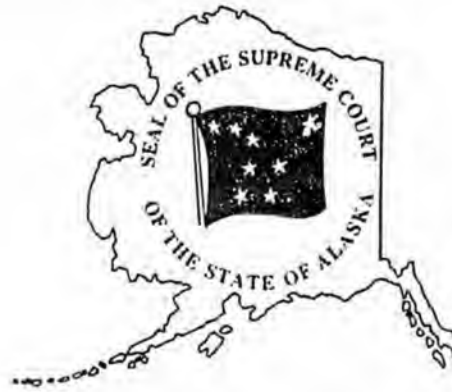


HB

437



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

January 22, 1996

The Honorable Brian Porter
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Porter:

I am writing to request a hearing on House Bill 437, establishing a Judicial Officers' Compensation Commission. This bill was introduced by the Judiciary Committee at the request of the Alaska Supreme Court.

HB 437 creates a new Judicial Officers Compensation Commission to assume the judicial salary functions of the existing State Officers Compensation Commission. As you know, the existing commission recommends compensation levels for judges and other state officers to the legislature; its proposals frequently go unheeded for reasons unrelated to their merits.

In contrast, the commission created by HB 437 would have the authority to actually establish compensation levels for supreme court justices, judges of the court of appeals, judges of the superior court and district court judges. This commission, appointed by the governor, could submit proposed salary and per diem for those officers to the legislature every two years. These compensation levels would take effect on the effective date of the first appropriation to fund the increase, unless disapproved by a bill that was enacted into law within 60 days of submission.

The Honorable Brian Porter
January 22, 1996
Page

Approximately 26 states, as well as the federal government, currently operate compensation commissions. In nine of those jurisdictions, the commission has the authority to establish compensation amounts. The purpose behind the existence of these commissions is simple: to see that fair decisions are made regarding the compensation of certain government officials, and to reduce the political battles that inevitably surround such salary decisions.

An essential goal of the Alaska Court System is to attract and retain highly qualified jurists. Achieving this goal requires salaries that are commensurate with the qualifications and responsibilities of the office, which has proven problematic. When adjusted for the cost of living, Alaska judicial salaries are ranked approximately 33th among the 50 states, a slip in position of 23 places since the last pay increase in 1991.

I hope that you will agree with the supreme court on the need for HB 437. Please feel free to contact my office if you require any additional information on this piece of legislation.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'C. S. Christensen III', with a long horizontal flourish extending to the right.

C. S. Christensen III
Staff Counsel

HB 437 "An Act establishing the Judicial Officers Compensation Commission; relating to the compensation of supreme court justices, judges of the court of appeals, judges of the superior court, and district court judges; and providing for an effective date."

- Approximately 26 states and the federal government operate some form of compensation commission. In nine of those jurisdictions, the commission actually sets the salary of certain public officials, rather than merely offering recommendations to the legislature.
- The existing State Officers Compensation Commission does not have the power to establish salaries, only to make recommendations to the legislature. The legislature has generally not acted on its recommendations.
- The commission created by HB 437 is modeled very closely on the existing commission. There are two major differences: the new commission will have the power to establish compensation for justices and judges, not make recommendations, and the new commission will have a list of specific factors it must consider in determining fair compensation for justices and judges.
- The commission has five members appointed by the governor to four-year terms. Among the members must be a business executive, a person with experience in personnel management, a representative of a nonpartisan voters' organization, an economist, and a lawyer. (section 7)
- The commission meets every other year. It must hold public hearings. (section 7)
- The commission may consider the compensation of justices of the supreme court, judges of the court of appeals, judges of the superior court, and district court judges. (section 7)
- "Compensation" is defined as salary and per diem. (section 7)
- No later than the 10th day of the regular session in each odd-numbered year, the commission must submit a report on its findings to the legislature. It may also submit an order changing the compensation of justices and judges. (section 7)

- The legislature has 60 days in which to reject the order by enacting a law. This rejection must be done by law, since the legislature may not overturn an administrative order by resolution. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). If an order is not rejected within 60 days, and if the legislature has appropriated the money to fund it, the order becomes effective on the effective date of the appropriation. If the order is rejected, it must be rejected in its entirety. (section 7)
- The standards for setting salaries which the commission must follow are modeled on Illinois law, with modifications to reflect Alaska conditions. These standards have been upheld by the Illinois Supreme Court.
- Two jurisdictions operating a statutory compensation commission similar to that proposed by HB 437 have had their law challenged (Illinois and the federal government). This delegation of legislative power to set salaries has been upheld three separate times by the federal courts, as well as by the Illinois Supreme Court.
- A legislative body may delegate its power to set the salaries of public officials, even when the constitution provides that such salaries must be set "by law," as long as the legislature retains the ultimate control over the salaries. This control exists if the following conditions are met:
 1. There should be specific standards to guide the commission in its determination of salaries. HB 437 contains such standards in section 7.
 2. There should be a holdover period in which the legislature can reject the salaries proposed by the commission. In section 7, HB 437 provides for a 60-day period in which the legislature may reject compensation proposed by the commission.
 3. The legislature must retain control over the appropriation process. This control is affirmed in section 7.
 4. The legislature must retain the power to pass overriding legislation at a later date if it wishes to change salaries. Since one legislature cannot bind another, this power cannot be taken away by HB 437.

HOUSE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE BY REQUEST

Introduced:
Referred:

A BILL
FOR AN ACT ENTITLED

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3 of the superior court, and district court judges; and providing for an effective
4 date."

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

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

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

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

1 (a) The compensation of a superior court judge shall be established by order
2 of the Judicial Officers Compensation Commission.

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

4 (a) The compensation of a district court judge shall be established by order of
5 the Judicial Officers Compensation Commission.

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

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

11 * Sec. 6. AS 39.23.240(b) is amended to read:

12 (b) The commission may review the compensation, benefits, and allowances
13 of the governor, lieutenant governor, [JUSTICES AND JUDGES OF THE COURT
14 SYSTEM,] and the heads of the principal departments and shall prepare a report of its
15 recommendations for the legislature. The commission shall notify the legislature that
16 the report is available.

17 * Sec. 7. AS 39.23 is amended by adding new sections to read:

18 ARTICLE 2. JUDICIAL OFFICERS COMPENSATION COMMISSION.

19 Sec. 39.23.500. JUDICIAL OFFICERS COMPENSATION COMMISSION
20 ESTABLISHED. (a) The Judicial Officers Compensation Commission is established
21 in the Office of the Governor. The commission is composed of five members
22 appointed by the governor. Members serve staggered terms of four years.
23 Commission membership shall include at least one business executive, one person with
24 experience in personnel management, one representative of a nonpartisan voters'
25 organization, one economist, and one lawyer. A vacancy shall be filled for the balance
26 of the unexpired term. A commission member may serve no more than two complete
27 consecutive terms.

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

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

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

6 Sec. 39.23.510. PROHIBITIONS AGAINST STATE OR MUNICIPAL
7 SERVICE. A member of the commission may not be employed by the state, including
8 the University of Alaska, serve as a member of another state board, commission, or
9 authority, or hold elective state or municipal office during membership on the
10 commission.

11 Sec. 39.23.520. COMPENSATION. Members of the commission serve
12 without compensation but are entitled to per diem and travel expenses authorized for
13 members of boards and commissions under AS 39.20.180.

14 Sec. 39.23.530. STAFF. (a) If requested by the commission, the Alaska Court
15 System shall provide staff for the commission.

16 (b) If requested by the commission, the director of personnel in the Alaska
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21 a report to the legislature on its findings every odd-numbered year no later than the
22 10th day of the regular session of the legislature. A commission member who does
23 not concur in the report may file a minority report.

24 (b) If the commission finds that compensation over which it has jurisdiction
25 should change, the commission shall submit an order with the report making changes
26 to the compensation. Before submitting a report or order on compensation, the
27 commission shall give reasonable public notice of its preliminary findings, solicit
28 public comments, and give due regard to the public comments.

29 (c) An order changing the compensation of a justice or judge takes effect
30 unless a bill disapproving the order in its entirety is enacted into law within 60 days
31 after the order is submitted to the legislature. Unless disapproved, an order increasing

1 the compensation of a justice or judge is subject to funding through legislative
2 appropriation and takes effect on the effective date of the first appropriation to fund
3 the increase.

4 (d) Unless disapproved, an order decreasing the compensation of the supreme
5 court justice, judges of the court of appeals, judges of the superior court, or district
6 court judges takes effect on the effective date of a general law applying to all salaried
7 officers of the state that diminishes compensation, but only if the order is consistent
8 with the general law.

9 Sec. 39.23.550. FILING WITH LIEUTENANT GOVERNOR AND
10 CERTIFICATION. The commission shall, upon transmitting an order on
11 compensation to the legislature, file the order in the office of the lieutenant governor.
12 When the order becomes effective, the commission shall certify the copy of the order
13 on file in the office of the lieutenant governor.

14 Sec. 39.23.560. POLICY OF THE LEGISLATURE. It is the policy of the
15 legislature that the commission determine an equitable rate and form of compensation
16 for supreme court justices, judges of the court of appeals, judges of the superior court,
17 and district court judges. In determining the compensation for each office, the
18 commission shall consider the following factors:

- 19 (1) the skill required;
- 20 (2) the time required;
- 21 (3) the opportunity for other earned income;
- 22 (4) the value of judicial services as performed in other states and in the
23 federal government;
- 24 (5) the value of similar services when performed in the private sector
25 of this state and in other states based on the responsibility and discretion required in
26 the office;
- 27 (6) the reasonable expenses incurred in performing the judicial service;
- 28 (7) the percentage change in the Consumer Price Index for Anchorage,
29 Alaska, as determined by the United States Department of Labor, Bureau of Labor
30 Statistics since the last compensation adjustment;
- 31 (8) the compensation presently received by the judicial officers and all

1 other benefits received;

2 (9) the interests and welfare of the public and the financial ability of
3 the state to meet the costs;

4 (10) the geographic cost-of-living based on a judicial officer's primary
5 place of assignment;

6 (11) the cost-of-living differential between Anchorage, Alaska, and
7 other locations in the United States; and

8 (12) other factors that are normally or traditionally considered in the
9 determination of compensation.

10 Sec. 39.23.570. ADMINISTRATIVE PROCEDURE ACT. The regulation-
11 making provisions of AS 44.62 (Administrative Procedure Act) do not apply to
12 proceedings of the commission.

13 Sec. 39.23.600. DEFINITIONS. In this chapter,

14 (1) "commission" means the Judicial Officers Compensation
15 Commission;

16 (2) "compensation" means the salary and per diem paid a judicial
17 officer.

18 * Sec. 8. AS 22.05.140(c), 22.05.140(d); AS 22.07.090(c); AS 22.10.190(c), 22.10.190(d);
19 AS 22.15.220(d), 22.15.220(e); AS 22.35.010; and AS 39.27.011(d) are repealed.

20 * Sec. 9. Notwithstanding AS 39.05.055(5) and the provisions of AS 39.23.500, enacted
21 by sec. 7 of this Act, one of the initial members appointed to the Judicial Officers
22 Compensation Commission shall serve a one-year term, one member shall serve a two-year
23 term, one member shall serve a three-year term, and two members shall serve four-year terms.

24 * Sec. 10. When the Judicial Officers Compensation Commission files its first order
25 changing the compensation of justices of the supreme court or judges of the court of appeals,
26 superior court, or district court, it shall address the compensation of all of those judicial
27 offices in the order.

28 * Sec. 11. Sections 1 - 5 and 8 of this Act take effect on the date that the first order
29 changing the compensation of justices and judges issued by the Judicial Officers
30 Compensation Commission takes effect.

31 * Sec. 12. Sections 6, 7, 9, and 10 of this Act take effect immediately under

1 AS 01.10.070(c).

Alaska State Legislature



House of Representatives House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

January 22, 1996

TO: House Judiciary Members

FROM: Tom Meyer, Committee Aide

RE: Judicial Salary Commission bill

Attached is a copy of filed yet to be numbered HB ____ (JUD) that will be scheduled for hearing and sponsored by the House Judiciary Committee. This bill establishes a judicial salary commission. The bill is sponsored by the committee by request of the Court System without commitment of support from the committee.

HOUSE BILL NO.
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NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced:

Referred:

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FOR AN ACT ENTITLED

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5 the Judicial Officers Compensation Commission.

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

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10 state employees.

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Offered:

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Sponsor(s): HOUSE JUDICIARY COMMITTEE BY REQUEST

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12 When the order becomes effective, the commission shall certify the copy of the order
13 on file in the office of the lieutenant governor.

14 Sec. 39.23.560. POLICY OF THE LEGISLATURE. It is the policy of the
15 legislature that the commission determine an equitable rate and form of compensation
16 for supreme court justices, judges of the court of appeals, judges of the superior court,
17 and district court judges. In determining the compensation for each office, the
18 commission shall consider the following factors:

- 19 (1) the skill required;
20 (2) the time required;
21 (3) the opportunity for other earned income;
22 (4) the value of judicial services as performed in other states and in the
23 federal government;
24 (5) the value of similar services when performed in the private sector
25 of this state and in other states based on the responsibility and discretion required in
26 the office;
27 (6) the reasonable expenses incurred in performing the judicial service;
28 (7) the percentage change in the Consumer Price Index for Anchorage,
29 Alaska, as determined by the United States Department of Labor, Bureau of Labor
30 Statistics since the last compensation adjustment;
31 (8) the compensation presently received by the judicial officers and all

1 other benefits received;

2 (9) the interests, comments, and welfare of the public and the financial
3 ability of the state to meet the costs;

4 (10) the geographic cost-of-living based on a judicial officer's primary
5 place of assignment;

6 (11) the cost-of-living differential between Anchorage, Alaska, and
7 other locations in the United States; and

8 (12) other factors that are normally or traditionally considered in the
9 determination of compensation.

10 Sec. 39.23.570. ADMINISTRATIVE PROCEDURE ACT. The regulation-
11 making provisions of AS 44.62 (Administrative Procedure Act) do not apply to
12 proceedings of the commission.

13 Sec. 39.23.600. DEFINITIONS. In this chapter,

14 (1) "commission" means the Judicial Officers Compensation
15 Commission;

16 (2) "compensation" means the salary and per diem paid a judicial
17 officer.

18 * Sec. 8. AS 22.05.140(c), 22.05.140(d); AS 22.07.090(c); AS 22.10.190(c), 22.10.190(d);
19 AS 22.15.220(d), 22.15.220(e); AS 22.35.010; and AS 39.27.011(d) are repealed.

20 * Sec. 9. Notwithstanding AS 39.05.055(5) and the provisions of AS 39.23.500, enacted
21 by sec. 7 of this Act, one of the initial members appointed to the Judicial Officers
22 Compensation Commission shall serve a one-year term, one member shall serve a two-year
23 term, one member shall serve a three-year term, and two members shall serve four-year terms.

24 * Sec. 10. When the Judicial Officers Compensation Commission files its first order
25 changing the compensation of justices of the supreme court or judges of the court of appeals,
26 superior court, or district court, it shall address the compensation of all of those judicial
27 offices in the order.

28 * Sec. 11. Sections 1 - 5 and 8 of this Act take effect on the date that the first order
29 changing the compensation of justices and judges issued by the Judicial Officers
30 Compensation Commission takes effect.

31 * Sec. 12. Sections 6, 7, 9, and 10 of this Act take effect immediately under

1 AS 01.10.070(c).