

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**

**6927 HOUSE JUDICIARY**

Section 3 adds to, deletes and rearranges the statement of various duties of the clerk. By adding specific duties to the clerk, once again, the legislature would be restricting the options of the municipality. For example, under proposed section 29.20.380(1) a new duty is added requiring the clerk to attend meetings of all boards and committees of the governing body as required (presumably by the governing body). This appears superfluous as the statute already requires that the clerk perform other duties as required by law or the governing body. New subsection (4) appears to place, within the sole discretion of the clerk, the authority to develop retention schedules and procedures for the inventory, storage and destruction of records. Query whether this implies that neither the administration nor the assembly has any control over records retention and management. Subparagraph (6) is superfluous as it is covered by the requirement that the clerk perform other duties as required by the governing body. If it is felt that subparagraph (7) is required, perhaps something should be added to indicate that the clerk is also required to ensure that all local ordinance requirements are complied with, however, the phrase requiring assurance that various laws are complied with appears superfluous. Subparagraph (9) again takes away flexibility of the governing body as it permits only the clerk to be the parliamentary advisor. I presume that by "parliamentary advisor" it is meant "parliamentarian." Traditionally, the parliamentarian is the advisor to the presiding officer, and not to the body as a whole. I know that the practice in a lot of communities permit members of the body to make direct inquiry of the parliamentarian, but this is not in accordance with Roberts Rules. As the parliamentarian is the advisor to the presiding officer, the presiding officer should be permitted to select his or her own parliamentarian. Further, not all clerks come to the job with either the background or knowledge necessary to act as a parliamentarian. There may be another member of staff or member of the governing body that is much better equipped to act parliamentarian. Why shouldn't the governing body or the presiding officer have the flexibility of determining who will act, from time to time, as the parliamentarian? The addition of subparagraph (8) regarding to oaths and affirmations clearly expands the authority of the clerk without infringing on the flexibility of the municipality and is probably a good addition. One of the other changes that will occur is the elimination of the authority of the chief administrator to prescribe duties for the clerk (compare the existing subparagraph (6) with its counterpart (10) in the bill). The clerk is responsible for the maintenance of all the official records of the municipality. The bulk of these records are actually generated by the administration. Thus, there may be situations where the chief administrator should be giving directions to the clerk. This would be particularly so if the clerk is appointed by the chief administrator. Again, as with the question of where the appointing authority should lie, the

Scott Burgess  
February 15, 1991  
Page 3

legislature should leave to each municipality the ability and the authority to determine what will work best for its municipality.

Sincerely,

PRESTON THORGRIMSON  
SHIDLER GATES & ELLIS

By:



Gerald Lee Sharp

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RECEIVED MAR 1 1991

MAYOR AND CITY COUNCIL  
POST OFFICE BOX 1397, KODIAK, ALASKA 99615

TELEPHONE (907) 486-8635  
FAX (907) 486-8600

February 26, 1991

Honorable Cliff Davidson  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

RE: House Bill 128

Dear Representative <sup>Cliff</sup> Davidson:

As discussed, I urge you to cosponsor Cheri Davis' bill relating to the offices of municipal clerk and clerk-treasurer. I know you understand the importance of the Clerk's position to the municipalities around the State.

I also urge you and Representative Davis to either offer a sponsor substitute or to support an amendment which would specify compliance with Section 5 of the Federal Voting Rights Act. The Voting Rights Act requires more than administering municipal elections in such a manner that all "federal and state election laws are complied with" but encompasses other local actions such as boundary changes. Many of the Clerks in smaller municipalities may not even be aware of the Act and its requirements. I feel it would be helpful to include a specific reference in AS 29.20.380.

Thank you for your consideration.

Sincerely,

CITY OF KODIAK

MARCELLA H. DALKE, CMC/AE  
City Clerk

MHD/ms

P.O. Box 188  
Barrow, Alaska 99723  
March 1, 1991

Honorable Eileen P. MacLean  
Alaska State Legislature  
Box V  
Juneau, Alaska 99811

Dear Representative MacLean:

I am writing in reference to HB 128, a Title 29 bill that would transfer the appointment of the municipal clerk from the mayor of a municipality to the governing body of said municipality.

While I do like the concept of this bill and the spelling out the duties of the municipal clerk, there are some questions that I have should this bill be passed and made into law. I would like to expound upon my experience regarding this matter.

The Alaska Municipal League supports this bill and did specifically include it into their 1991 policy statement (1991 PS, VII B 2). However, I as a Barrow City Councilman, introduced an ordinance (see enclosed Ordinance 91-01) to reflect the AML policy statement. The mayor, Donald Long, was opposed to this because he said that it would hinder the normal course of city business where if he needed something with the official seal of the city affixed to it, he would have to wait until the council gave approval for it at their next regular meeting, or call a special meeting for the simple task of getting approval for a document that may not need council approval (i.e. proclamations, licenses, deeds, etc.). There were also other considerations such as evaluating employee performance, discipline and the immediate supervisor of the city clerk.

These matters were expressed by the mayor at a workshop of the council on February 6, 1991 and was reiterated during the public hearing of regular council meeting the following evening. Because I had very little argument on behalf of the ordinance, the ordinance failed to pass the council upon voting on it.

While HB 128 is now in the Community and Regional Affairs committee and will enter the Judiciary committee at a later date, I feel that more work needs to be done to improve this bill and make it more applicable for small municipalities where the mayor is the chief administrator for the municipality, otherwise those municipalities will suffer the same scenarios as was brought up before the Barrow City Council.

I hope that you may pass this information on the Community and Regional Affairs chairman and the Judiciary chairman so that a committee substitute may be introduced.

If you have any questions regarding this matter, or would like more information, please do not hesitate to contact me at 852-7181.

Sincerely,

Michael D. McDermott, Councilmember  
City of Barrow

MDMc:ss  
Enclosure

cc: Hon. Jerry Mackie, Chairman; House Committee on Community and  
Regional Affairs  
Hon. Dave Donley, Chairman; House Judiciary Committee  
Scott Burgess, Executive Director; Alaska Municipal League  
Hon. Don Long, Mayor; City of Barrow  
Hon. Johnny Leavitt, Councilmember  
Hon. Miranda Rexford, Councilmember  
Hon. Rosabelle Rexford, Councilmember  
Hon. William F. Brown, Councilmember  
Hon. Lucy Brown, Councilmember

ORDINANCE 91-01

AN ORDINANCE AMENDING SECTIONS 2.20.020 AND 2.20.030 OF THE BARROW CODE OF ORDINANCES, RELATING TO THE APPOINTMENT OF THE CITY CLERK BY THE CITY COUNCIL.

Section I. CLASSIFICATION. This ordinance is of a general and permanent nature and shall become apart of the City of Barrow Code of Ordinances.

Section II. EFFECTIVE DATE. This Ordinance shall become effective upon adoption by the City Council.

Section III. AMENDMENTS. Section 2.20.020 and 2.20.030 of the Barrow Code of Ordinances is amended as follows: (material to be added is typed in boldface and material to be deleted is typed in [brackets].)

2.20.020 Appointment. A. The [city clerk,] finance director and city attorney are appointed by the mayor acting as the chief administrative officer of the city. [Officers] The finance director and the city attorney serve at the pleasure of the mayor, subject to ordinance. Appointments by the mayor are subject to confirmation by the city council.

B. The city clerk is appointed by the city council acting as the legislative body for the city. The city clerk shall serve at the pleasure of the city council, subject to ordinance. Appointments by the city council shall require a two-thirds majority vote.

2.20.030 City Clerk. There shall be a city clerk, who shall be an officer of the city appointed by the [mayor] city council subject to [council approval] two-thirds majority vote of council to serve for an indefinite term. The city clerk shall serve as the clerical officer of the council. He shall maintain the journal of the proceedings of the council, and shall enroll in a book or books kept for that purpose all ordinances and resolutions passed by it. He shall be the custodian of such documents and records as may be provided by law or ordinance, shall keep a correct record of city boundaries and changes therein, and shall have such powers and duties relating to elections as this chapter and council may prescribe. He shall have such other powers, duties and functions as may be prescribed by applicable law or by ordinance.

Introduced: \_\_\_\_\_

Public Hearing: \_\_\_\_\_

March 14, 1991

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Fax #	586-5299	Fax #

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**DRAFT****SUPPORT HOUSE BILL 128**

Since its inception in 1966, the Alaska Association of Municipal Clerks ("AAMC") has actively sought to heighten the professional development of its members. Professional development is a process for planned and continued learning and positive imaging.

The profession of municipal clerk extends to biblical times and beyond, and along with tax collector is the oldest of public officials. The Hebrew translation of town clerk literally means the city or town "reminder." The English Bible called the clerk the "recorder," who was "one who caused to remember" or "called to mind." When the early colonists came to America, they set up forms of local government to which they had been accustomed, and thus, the office of clerk was one of the first established. The office of the clerk has been preserved and may be found in virtually every unit of local government in the world.

The office of clerk provides many different and complex services. The role of the clerk can be and many times is, beyond the scope of the office's legal mandate because of the very nature of the job. Legally mandated responsibilities set the legal framework of the role of the clerk and in so doing allow this office to be a major source of information to all people in and out of government.

The image of the clerk's office bears on the perception that the public sees. In order to create a better image of the clerk's position, AAMC is undertaking a positive approach to sell... our skills, our caring, our self-esteem, our attitude and continuing education to create an image that is believable and trusted. Updating the "powers and duties of the municipal clerk" or the "legal mandates" of the clerk's office is one step in the process.

The municipal clerk plays a unique role in the balance of powers in local government. As municipal clerks, we believe the office of clerk is a valid and valuable asset to local government and we would like to convince you of the same.

The governing body/manager form of government as well as the strong mayor form of government is based on a philosophy of separation of powers that establishes separate legislative and administrative branches. The governing body is directly accountable to the citizens for translating needs and expectations into laws and policies. The manager/mayor and staff comprise the administrative branch of local government. The role of the municipal

**DRAFT****SUPPORT HB 128**

March 14, 1991

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clerk appropriately becomes the link between the legislative and administrative branches. The clerk is responsible for the processes for bringing forth the administration's requests for legislative direction and for recording the governing body's policies and directions. Equally important is the municipal clerk's role in providing public access into the process. In Alaska the positions of both the municipal clerk and the municipal attorney may enjoy a distinctive status in the administrative branch of local government. This approach is taken to guard against abuse by any public official by providing a means of checks and balances. There should be little doubt that clerks have a significant and critical part in government and their role should be protected and promoted accordingly.

House Bill 128 does two things. First, it requires a governing body to appoint a municipal clerk and removes previous ability to "provide otherwise by ordinance;" however, AS 29.20.380 is not a limitation of home rule powers - it does not apply to home rule municipalities.

*This change was not included in the first draft of the proposal presented to AAMC at its November 13, 1990 meeting. The municipal clerks representing thirty-nine (39) municipalities around the State (See attached list) discussed the addition of such a requirement and then voted unanimously to include it in our proposal. Our proposal was to require that every municipality have a clerk. The shifting of the section relating to treasurer or combining of offices was done by Legislative Affairs Agency - we don't know why.*

*It is our understanding that this change causes concern to some of the State's local government officials representing smaller communities and villages. In defense of our position, consider the many villages who have had managers and/or administrators leave under less than desirable conditions because they were the sole source of administrative overview for that community. This change was not AAMC's original goal with this legislation and we would gladly compromise by going back to the previously existing language in order to preserve the rest.*

Second, House Bill 128 updates the legal mandates of the municipal clerk. Once again, it does not apply to home rule municipalities. Title 29 is used as a guide as well as a legal mandate. The minor word changes from the former language as presented in the paragraphs of Section 3 of the bill are offered to enhance the reader's understanding of the duties and responsibilities and they are not intended to be insidious. The additions proposed are appropriate and are not designed to be anarchist.

**Section 29.20.380 (1)**

This language is the same as existing AS 29.29.380(2) with the addition of the words "and its boards and committees." This does not add or subtract in any significant way to what already exists.

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**DRAFT**

Section 29.20.380 (2)

Custody of the municipal seal has historically rested with the municipal clerk. The clerk attests deeds and official documents for the municipality and affixes the seal. It is commonly true among the 78 members of AAMC and 7,000 members of IIMC (International Institute of Municipal Clerks) that the clerk has custody of the official municipal seal. This section merely establishes responsibility for the corporate seal. It does not restrict or hinder its legal use.

Section 29.20.380 (3)

This paragraph is a combination of existing 29.20.380(3) and (4). The intent of the language remains the same and yet encourages a clerk to become well acquainted with public meeting and public information laws. Current language states "arrange publication of notices, . . ." which does not consider that public notice in today's technology expands beyond "publications." Public records are all covered by Alaska's public information law and yet in existing language there is no mention of such records as "magnetic tape or microfiche," for example.

Section 29.20.380 (4)

This is a new section. The records management program in a municipality is vital. Yet, there is often very little interest in developing and maintaining such a tedious program. We view this new language as assigning responsibility rather than usurping authority. Records management is a very common function of the municipal clerks offices around the world.

AS 40.21.070 prescribes for records management for local records and AS 40.21.080 provides for disposal of public records by a political subdivision. These sections leave the authority vested in the local governing body. This new section assigns the responsibility for the records management program to the clerk when the municipality has a clerk and it does not, in conflict with Title 40, place the program within the sole discretion of any official.

Title 40 also states that such a program will follow, as far as is practical, the program established for the management of state records. Implementation of such a program would generally be enacted by appropriate resolutions and ordinances adopted by the governing body.

Section 29.20.380 (6)

This is new language. Once again preparation of the agenda and back up material packets is commonly done by the clerk's office in a majority of the country's municipalities. Once again it is more of an assignment of responsibility for a typical duty which takes up a good amount of the clerk's time.

**DRAFT**

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Section 29.20.380 (7)

Election administration is a major function of the clerk's office. Municipal clerks spend many hours in training and research to maintain expertise in this field. Of all the "traditional" or common functions of the clerk's office, this one is perhaps the most deeply rooted. Title 29 refers to the municipal clerk in sections dealing with election contest and appeal, and petition requirements under the Elections chapter. Title 15, Elections, directs the municipal clerk to provide voter information from the municipality. It is logical to add this new section.

AAMC suggested the following language for this section: "administer all municipal elections and perform related duties;" The language was changed by Legislative Affairs Agency. AAMC suggested language is short and to the point. "Perform related duties" refers to the many election duties we assume for the State of Alaska such as voter registration, precinct worker training, distributing and accepting absentee ballot requests, etc.

AAMC prefers the original suggested language together with the addition of a new paragraph which was also deleted by Legislative Affairs Agency: "assure that the municipality complies with Section 5 of the Federal Voting Rights Act,"

The State of Alaska and all of its local governments are required to preclear all changes effecting voting before enforcing those changes. It may appear on the surface that such a consideration could be covered under the proposed language "assure that federal and state election laws are complied with," and that may be true. The act, however, also covers changes that have the potential to affect voting and/or the election process such as annexations, detachments, incorporation, dissolutions, and procedural changes.

The State Division of Elections approached AAMC several years ago to conduct training on compliance with this act and to encourage all municipalities to comply. Not only does a municipality face serious and expensive legal action for non-compliance, but also the State cannot "bail out" until it and all its local governments have complied with the requirements of the Voting Rights Act for 10 years.

AAMC supports inclusion of this new paragraph. It will serve as a cross reference and reminder to municipalities about something that is already required. It assigns responsibility to make sure it gets done.

Section 29.20.380 (8)

This is a cross reference of AS 09.63.010 which gives the authority.

Section 29.20.380 (9)

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Page 5

**DRAFT**

This is a new section. First, use of the terminology "parliamentary advisor" is by design. Municipal clerks are trained in rudimentary rules of procedure merely through contact with many, many public meetings. As part of our professional development process, we would like to encourage municipal clerks to become skilled in parliamentary rules and practice. We do not see it as unreasonable to require a clerk to acquire enough skill to offer assistance and advice to any member of the local governing body, including the mayor or presiding officer, who wants to know how to proceed in a formal meeting.

The intent was not to restrict the presiding officer or mayor in selection of a parliamentarian. We do not feel it does. By encouraging the development of this skill in the clerk's office, the mayor or presiding officer may have a registered Parliamentarian to call on at some future date.

Section 29.30.380 (10)

This is the same as current AS 29.20.380(6). If the change is made to Section 1 and 2 as noted above, add "or prescribed by the chief administrator or" by the governing body.

The role of the professional clerk has been and is now characterized by at least four descriptive words: ambiguity. . . conflict. . . strain. . . neglect. Despite this, surveys have shown that clerks appear to be even tempered, unflappable, healthy individuals who manage to keep from taking either themselves or others too seriously. Our goal is obviously to enhance the importance of the clerk's position. Our dedication is to serve the best interests of all people whatever that may require. Our process is to clarify the legal mandates which give us our goals to achieve. We urge your support of House Bill 128.

March 20, 1991

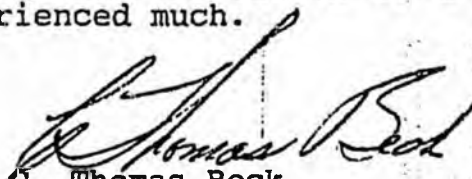
Greetings:

My name is C. Thomas Beck and I would like to speak in favor of House Bill 128. I served on the Thorne Bay City Council for three years and of that time about half was spent as mayor. The first five years of Thorne Bay's history was spent for the most part in a turmoil having to deal with a constant turnover in administrators.

The city clerk provided stability and continuity for our City during those difficult times. This would not have been so if the local governments' "Bible"--Title 29, hadn't been in place to give guidance and a general job description. We also spent many hours on the telephone talking to Community and Regional Affairs and they were very helpful. For small communities and those who are trying to keep their legal costs down these sorts of guidelines are essential.

With the passage of House Bill 128 a firm but flexible job description will be in place to assure city business is completed with a continuity necessary to keep a city moving in the right direction. As a former elected official I can see the real benefit of this legislation to new and small municipalities and urge your support of House Bill 128.

Thank you very much for taking time to listen to a former elected official who has experienced much.



C. Thomas Beck  
Former Mayor

# ALASKA ASSOCIATION OF MUNICIPAL CLERKS

May 2, 1991

Representative Jerry Mackie  
P. O. Box V  
Juneau, AK 99811

RE: CS HB 128, Relating to the Office of the Municipal Clerk

I am requesting your support for CS HB 128 relating to the duties of Municipal Clerks. Enclosed is a copy of the position paper of the Alaska Association of Municipal Clerks.

The Clerk's office is often the first office that the public has contact with and it is from that initial contact that the public's perception of local government is established. Because the Clerk's duties are so varied and complex, AAMC is seeking some standardization of those duties. We are not seeking to limit the authority of the governing body nor the administration.

Conceivably, when a new administration comes into office, functions and duties of departments could be shifted from one office to another. The duties of the Finance Office would never be shifted to the Planning Department. Why then should the traditional duties of the Clerk be shifted elsewhere?

State statutes, municipal codes, and common sense dictate the functions of the various departments of municipal government. The subdivision of land would not be handled by the Parks Department, nor would the Librarian be in charge of swimming pools. AAMC feels the duties of the Clerk should also be standardized and not left to the whim of the current administrator.

The list of duties of the Clerk has not been revised in twenty years. We are merely requesting language which brings in line the actual functions and duties of the Clerks of Alaska.

I, personally, would like to see the bill passed in its original form and with the application also to home rule municipalities. I feel strongly that the position of Clerk should be mandated in each municipality in the state and that unless otherwise provided by ordinance, the Clerk should be appointed by the governing body.

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President: Jeanne Donald, CMC, City of Valdez  
Vice President: Melinda Jenkins, City & Borough of Sitka

Secretary: Martha Harrell, CMC/AE, FNSB  
Treasurer: Linda Conley, City of Nome

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Page 2

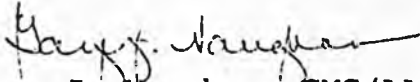
This allows for checks and balances. A governing body should have its own staff, even if it is only one person, rather than always directing things through the administrator. The legislature has its own staff, entirely separate from administration.

AAMC, however, does support the bill in its current language.

Again, I urge your support for CS HB 128. Thank you for your consideration.

Sincerely,

ALASKA ASSOCIATION OF MUNICIPAL CLERKS

  
Gaye J. Vaughan, CMC/AAE  
Chairman, Legislative Committee

RECEIVED MAY 13 1991

P.O. Box 7022  
Ketchikan, AK 99901  
May 10, 1991

The Honorable Dave Donley  
House of Representatives  
P.O. Box V  
Juneau, AK 99811

**SUPPORT CSHB 128 RELATING TO THE OFFICE OF MUNICIPAL CLERK**

This bill is now before you in the House Judiciary Committee. I urge you to support Committee Substitute for House Bill 128.

You will see the CRA Committee Substitute (proposed and supported by AAMC) has done away with a "mandatory" appointment of municipal clerk which was in the original bill. It is supported in the 1991 Alaska Municipal League Policy Statement, and Executive Director Scott Burgess has testified to the CRA Committee in support of the legislation.

You are probably aware of the fact that a majority of the Ketchikan Gateway Borough Assembly and Manager David Crow are opposed to CSHB 128. Testimony offered by Assemblymember Cheryle Tallman is the only opposition the bill has received thus far. On the other hand, several of Ketchikan's prominent citizens, former and current elected officials have given positive support to the bill. One of the most notable of these people is former Mayor Carroll G. Fader who was the Ketchikan Gateway Borough Mayor from 1975-1984. I have enclosed a copy of his letter in support of HB 128 for your review.

You undoubtedly possess the necessary knowledge and understanding of local governments to logically consider the ins and outs of the legislation proposed by CSHB 128. A copy of the Alaska Association of Municipal Clerk's (AAMC) position paper on the Bill is enclosed for your information if you wish to examine the details of each section as described from our perspective.

The major objection to the bill seems to be that it tends to infringe upon local government's ability to prescribe the duties of the municipal clerk. This is true. Title 29 does likewise with the duties of the chief administrator. General law municipalities have legislative powers conferred by law. The legislative purpose or intent of Title 29 is "to permit local

The Honorable Dave Donley  
May 10, 1991 - Page 2

government to function more effectively."<sup>1</sup> When the time comes for a municipality to function more independently, Title 29 prescribes the means for it to become a home rule municipality which has all legislative powers not prohibited by law or charter. Most general law municipalities consider Title 29 a guide and resource rather than a detriment. (See testimony of C. Thomas Beck, former Mayor of Thorne Bay)

A "laundry list" of municipal clerk's duties has existed in Statute for many years. Enclosed are copies of pages from the Alaska Statutes over the years describing those duties. You can see this section has not changed much in thirty years. It is apparent that these statutes have existed for these many years without problem or concern. I almost prefer the language in the old Title 7, Boroughs, which mandates the appointment of a "person" to serve as a clerk. These duties must be carried out by someone regardless of the title.

Municipal clerks in both general law and home rule municipalities are supporting this legislation. Even though it is not applicable to home rule municipalities, it will become a base line for consideration in future municipal charters, job descriptions and the like. Your support in this pursuit would be much appreciated!

  
Georgianna Zimmerle

Enclosures

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<sup>1</sup>Section 1, ch. 74, SLA 1985



# Alaska State Legislature

Please enter into the record my testimony to the House CEA  
 committee name  
 committee on HB 128, dated 2/08/91  
 bill/subject

I'm Clerk of the Kodiak Island Borough and I'm chairman of the AAMC Legislative Committee and chair of AML's Legislative Comm on Education, Elections and Local Govt. Powers. I have been a municipal clerk in Alaska for over 12 years.

This bill was introduced at the request of the AAMC and I'd like to thank Rep. Chris Davis and the co-sponsors for introducing it.

AAMC will support a substitute bill which will delete sections 1 and 2 and amend section 3.

AAMC feels that the duties listed belong in the clerk's office. In most municipalities they are currently being done by the clerk.

Again, we support a substitution and urge "Do Pass".

Thank you.

Signed: Larry Vaughan  
 Testifier

Kodiak Island Borough / Alaska Assn. of Municipal  
 Representing (Optional) Clerks

710 Mill Bay Rd. Kodiak  
 Address

486-5736  
 Phone No.

March 19, 1991

Honorable Jerry Mackie  
Chair Community & Regional Affairs Committee  
House of Representatives  
P. O. Box V  
Juneau, Alaska 99811

RE: Support of House Bill 128

Dear Representative Mackie:

My name is Susan Bethel. I live at 718 Deermount, Ketchikan, Alaska. I have approximately 5 and 1/2 years experience as a municipal clerk in the State of Alaska. I am writing in favor of HB 128, relating to the offices of municipal clerk and clerk-treasurer, and would like to explain why.

I was the City Clerk for the City of Thorne Bay for approximately four years. This was a new 2nd class city with an administrator. Not a manager or a strong mayor form of government. The only direction I had was Alaska Statute Title 29. During the time I worked there, there were 8 administrators. One lasted 11 months. So you can see the government wasn't stable. Many times I was alone, a new clerk, with no training.

I have now worked as the Deputy Borough Clerk for the Ketchikan Gateway Borough for a year and a half. I feel these changes are needed to maintain ethics and competence in local government. There may not always be an ethical and competent manager/mayor in a municipality. Normally in municipalities the Clerk has no experience. This outline of duties needs to be written down and easily assessable.

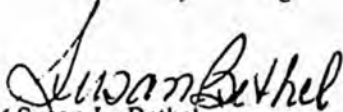
If it hadn't been for the Department of Community and Regional Affairs staff, the Alaska Association of Municipal Clerk's, AML and the other clerks in Southeast Alaska I would have been completely lost. As it was I called for advice in all areas of government for the municipality. I've been able to learn from experienced clerks and have become aware of the "Municipal" laws of the State.

Checks and balances are needed in government. If it is left to only the "manager or Mayor" to run the day to day operations in the municipality there is a great chance of malfeasants. You would never write a check in a municipality with only one signature. There has to be checks and balances in government.

We are public servants and we handle the "peoples" business in local government. We have to be honest and prepared to help the people we work for and represent in all areas of our position. I think you know what I mean being a representative in the State House. As a Clerk we don't play favorites.

Please pass HB128 to help insure local government has guidelines for duties of the Municipal Clerk, for the assemblies, councils, mayors and administrators in our State. If we have one "higher power" be it a Mayor/Manager or Administrator, to run the municipalities we are not a democratic government we are becoming a dictatorship.

Local ordinances are not enough. They are easily changed. We may not always have ethical competent people in charge. We need the checks and balances to insure government is fair and equitable in our municipalities and the history of our great state is recorded properly.

  
Susan L. Bethel  
718 Deermount  
Ketchikan, Alaska 99901

312 Front Street  
Ketchikan, AK 99901  
March 15, 1991

The Honorable Jerry Mackie  
House of Representatives  
P.O. Box V  
Juneau, Ak 99801

Dear Jerry:

Representative Davis' bill relating to municipal clerks, HB 128, has my support as a former Assemblyman of the Ketchikan Gateway Borough. As you and I both know, I have a long-standing involvement in local, state and federal government both as an interested Alaskan and member of the business community. I personally know all four municipal clerks in Ketchikan and have a lot of respect for the jobs that they do.

A long time ago I too was one of the many people who didn't realize the many hats and capabilities of the municipal clerk. Most of all, the safeguard of the checks and balance system is important to the taxpayers. I support having the manager, attorney, and clerk responsible to the Assembly.

Sincerely,



James B. Elkins

9. **Plumbing and Electrical Codes:** To eliminate the conflict between state and local plumbing and electrical codes, the League supports an amendment to the state statutes to place sole authority for enforcement with municipalities that have adopted such codes. The League supports the expeditious updating of state safety codes and an amendment to the statutes governing these codes that would allow municipalities adopting these codes to provide for a transition period regarding licensing and certification requirements for plumbers and electricians working within their boundaries. The League supports the adoption of the national plumbing codes as the standards for Alaska.

10. **Municipal Authorities and Public Corporations:** The League opposes any effort by the Legislature to restrict the method of establishment, form, powers, or other features of municipal port or other authorities. The League supports legislation that would clarify the ability of municipalities to form public corporations, authorities, and similar public entities through which they may exercise a power.

## B. MUNICIPAL OFFICERS AND EMPLOYEES

1. **Powers and Duties of the Municipal Clerk:** The League supports legislation that would update and clarify the powers and duties of the municipal clerk.

Title 29 provides a checklist of municipal clerk responsibilities which has not been updated in 18 years. Amendments proposed by the Alaska Association of Municipal Clerks delineate functions and duties which are and have been exercised by municipal clerks across the State for many years.

2. **Appointment of the Municipal Clerk:** The League supports legislation that would require a governing body to appoint a municipal clerk.

Both the governing body/manager form of government and the strong mayor form of government are based on a philosophy of separation of powers that establishes separate legislative and administrative branches. The governing body is directly accountable to the citizens for translating needs and expectations into laws and policies. The manager/mayor and staff comprise the administrative branch of local government. The role of the municipal clerk appropriately becomes the link between the legislative and administrative branches. The clerk is responsible for developing, administering, and protecting the processes for bringing forth the administration's requests for legislative direction and for recording the governing body's policies and directions. Equally important is the municipal clerk's role in providing public access into the process. This approach is taken to guard against abuse by any public official by providing a means of checks and balances.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CS HB 128

Revision Date: \_\_\_\_\_ Department Affected: Community & Regional Affairs  
 Title: Office of Municipal Clerk/ BRU: State Assessor  
Clerk-Treasurer Component: \_\_\_\_\_

Sponsor: Rep. C. Davis  
 Requestor: House C&RA 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						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708  
 Division: Administrative Services Date: 4/10/91  
 Approved by Commission: Edgar Blatchford  
 Agency: Community & Regional Affairs Date: 4/10/91

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

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 128

Revision Date: \_\_\_\_\_ Department Affected: DCRA

Title: Office of Municipal Clerk/ BRU: State Assessor  
Clerk-Treasurer Component: \_\_\_\_\_

Sponsor: Rep. C. Davis

Requestor: House CRA COMPONENT SERIAL NO. 

--	--	--	--

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						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Ronald Henderson Phone: 465-4708

Division: Administrative Services Date: 3/26/91

Approved by Commissioner: Er. Beck

Agency: Community & Regional Affairs Date: 3-26-91

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



# Alaska State Legislature

Please enter into the record my testimony to the House Community & Regional Affairs  
committee name

committee on HB 128 (CSHB 128), dated April 4, 1991  
bill/subject

CSHB 128 is in conflict with existing Title 29 (AS 29.20.400(a))  
which states:

"The governing body may establish municipal departments  
and distribute functions among them."

The current Title 29 already allows the local legislative body  
to assign to the clerk those duties listed in CSHB 128. The  
bill is an unnecessary restriction on local government authority  
and autonomy.

Signed: David M. Crow  
Testifier

Ketchikan Gateway Borough  
Representing (Optional)

344 Front St, Ketchikan AK 99901  
Address

228-6625  
Phone No.

## Position Statement - CS for HB 128

### Introduction

This position statement is made with all due respect to the Alaska State Legislature and to the Alaska Association of Municipal Clerks (AAMC). None of the points contained herein should be construed to question the motives or integrity of either of these groups.

### Description

House Bill 128, as originally introduced, would have mandated that the clerk in all non-home rule municipalities be hired by the local legislative body and would have provided for the combining of the clerk with the treasurer. Title 29 now gives the local legislative bodies the right to delegate the hiring of this position to the mayor or to the manager, depending on the locality's form of government. The original bill also mandated certain duties to be performed by the clerk and seemed to require all municipalities to hire a clerk. Currently, Title 29 contains a short and broad definition of the general duties of the position.

A substitute for HB 128 was introduced on April 4th. This bill deletes the hiring requirements for the clerk and the language regarding the combining of that office with that of the treasurer. However, it retains all of the mandated duties of the original bill, plus adding an additional duty for the clerk to perform.

### Background

The AAMC developed and presented to the Alaska Municipal League a "policy statement" regarding the hiring and the duties of clerks. This statement was incorporated into the 59 page "Alaska Municipal League Policy Statement 1991" adopted by the AML at its Annual Meeting last November in Anchorage. The clerks then subsequently drafted what was to become HB 128. As indicated, the bill has since been amended and reintroduced as CSHB 128. It should be noted, however, that while the AML "supports legislation that would update and clarify the powers and duties of the municipal clerk", it has not endorsed the specific list of duties contained in CSHB 128.

### The "Philosophy" of CSHB 128

While the revised bill drops the requirement that the clerk be hired by the local governing body, it still involves the state legislature in what should be strictly a local government's decision: what duties a particular employee shall perform on behalf of the local government. It could thereby set an inadvisable precedent. If the legislature decides to determine job duties for the clerk, why not for the planning director, or the

finance director, or the superintendent of schools? A local governing body is in a much better position than the legislature to determine what a particular local government official's job duties should and should not be.

Even though some principles in support of the bill are contained in the AML's Policy Statement, they run against the AML's more fundamental position on the State of Alaska's relationship with local government: Home rule, and maximum flexibility and independence for local governments. Page 45 of the Policy Statement, for example, provides as one of AML's basic policies that of "Local Autonomy":

"The League supports legislation that would promote more effective and independent local government in all organized boroughs and cities and opposes any legislation that unduly restricts local government operations. [Underlining added.]

The underlying philosophy of CSHB 128 seems to be that the legislature is more qualified than local governments in determining what duties the municipal clerk should perform. Furthermore, the clerk is being singled out for this special legislation. No other position in local government is given this "privilege" in Title 29 of having the state mandate such a specific list of duties, except perhaps the manager in a manager form of government. (While Title 29 does delineate duties of the manager, it should be remembered that the manager plan must be approved by the local government's voters.) Even in its amended form, this is not merely an "updating" or a minor "housekeeping" bill. It goes against the basic principles of Title 29 and could, in fact, "break the mold" of this carefully crafted state law, which skillfully delineates the role separation of local and state governments.

The AAMC's stated reason for advocating this legislation is to improve the professionalism and image of clerks in Alaska. This is certainly a worthwhile and well intentioned goal. However, the appropriateness of trying to achieve this goal through requiring a clerk's employer to assign certain job duties by state mandate is, at best, questionable.

Usually, there are two basic reason why uniformity in local government practices or procedures is required by the state. Either there is strong evidence of abuse at the local level or there are pervading arguments of a need for state wide uniformity. Neither of these two conditions exist, at least to the degree that would necessitate mandating this rather lengthy and detailed list of duties for the municipal clerk. Each municipality has its own unique needs and its own policies regarding its organization and the proper role of each of its employees. The stature of a local

position, its professionalism, and even its place within the local organization should not be determined by state mandate.

The contents of this bill also seem to indicate a lack of trust and confidence by the clerks in local government and in the local government process. All of the issues addressed in the bill can easily be dealt with at the local level. It could be interpreted that the clerks wish to "bypass" the very government they state they are supporting and to force local governments, through state legislation, to assign certain duties that should rightly be determined by each local governing body, based upon its on unique needs and resources.

#### A Reply to "Position Statement" by Clerks on this Bill

On March 15, the AAMC issued a "Policy Statement in Support of House Bill 128". This Statement addresses the "image" of the clerk's office. "In order to create a better image of the clerk's position, AAMC is undertaking a positive approach to sell...our skills, our caring, our self-esteem, our attitude and continuing education to create an image that is believable and trusted. Updating the 'powers and duties of the municipal clerk' or the 'legal mandates' of the clerk's office is one step in that process".

While the improving of a position's "image" may be a worthwhile goal, mandating the duties of the position through state law is not the proper way to do it. Is the prestige of the position and its positive image only achievable if local governments are forced to assign certain duties to the clerk? Professionalism in the performance of duties at the local level is the more proper way to improve the "image" of a position. If the "image" of the clerks is not satisfactory to the AAMC, then it should address the real reasons for this less than satisfactory image, rather than trying to overcome it through a legislative mandate. Why are no other municipal officers demanding this type of legislation to improve their own professional "image"? Why are the clerks the only identifiable group that sees the "need" for this type of legislation? Title 29 is not the place to improve the "image" of a municipal official's position.

Great exception is also taken to the statement that "The municipal clerk plays a unique role in the balance of powers in local government". It could be said that "balance of powers" at the local level is actually another term for inefficiency. The local government is directly responsible to its constituents and is directly accessible by the voters of the community. "Balance of powers" is an irrelevant concept for the relatively small local governments in Alaska. It is also historically been proven to

often lead to inefficiency and conflict, rather than to better and more responsive local government. The real "balance of power" at the local level is the balance between local authority and state and federal authority. CSHB 128 could be a precedent in starting to "unbalance" the roles of the state and local governments so carefully structured under the present Title 29.

The statement, "The governing body/manager form of government ...is based on a philosophy of separation of powers that establishes separate legislative and administrative branches" is simply not true, and demonstrates a fundamental misunderstanding of the manager form of government. That form has never been based on a "balance of powers" concept. In fact, its fundamental concepts are just the opposite of "balance of powers". They involve unity of power, accountability, cooperation, and teamwork. It was established for efficiency and effectiveness rather than for a brokerage of power. All power in the manager form of government is assigned to the legislative body. (Ironically, CSHB 128 would take away some of that power--specifically the power to determine the job duties of a particular employee.) There is no separation of powers. The manager is directly accountable to the governing body. A separation of powers weakens the elected legislative body and anticipates conflict, rather than cooperation and teamwork.

The manager form was modeled after the structure of most private corporations: The stockholders (voters) elect a board of directors (council or assembly) which, in turn, hires a chief administrative officer (manager) to administer the company (government) on its behalf. The manager works at the pleasure of the council or assembly, and exercises power only at the behest of the duly elected body.

The manager plan for local government evolved out of the old commission form, popular in the early part of this century, in which each department head was elected and served as a member of the council (commission). That form, which was based upon "separation of powers", soon proved so inefficient and unwieldy that the "structure of choice" rapidly changed to the manager form of government. The "heart and soul" of the manager plan is efficient and responsive management by and accountability of an appointed professional administrator, serving at the pleasure of the elected body.

The AAMC statement that "The role of the municipal clerk appropriately becomes the link between the legislative and administrative branches" thereby becomes irrelevant, especially in a manager form of government. If the manager works at the pleasure of the council or assembly and is directly accountable to that body, with no "separation of powers", why is there a need for a "link" between the manager and the legislative body?

The AAMC states that "In Alaska the positions of both the municipal clerk and the municipal attorney may enjoy a distinctive status in the administrative branch of local government." The key word here is "may". CSHB 128 would change that, at least for the clerks, to "shall". Again, that should be a local decision, not one mandated by the state legislature. And, if mandated for the clerks, why not for the attorneys or any other "administrative" position?

AAMC states that the bill is not a limitation of home rule powers because it does not apply to home rule municipalities. This statement avoids the issue of its interference with the "home rule" powers of non-home rule municipalities. It is also an implicit admission that it does in fact interfere with local government control and authority in non-home rule municipalities. It can also be argued that the bill is discriminatory against non-home rule power municipalities, by forcing them to assign duties to a municipal officer without requiring the same of home rule governments. If there is an overriding need for this legislation (because of abuse or a need for uniformity) why shouldn't it apply to home rule municipalities as well?

The AAMC policy statement also contends that "House Bill 128 updates the legal mandates of the municipal clerk....The minor word changes from the former language as presented in...the bill are offered to enhance the reader's understanding of the duties and responsibilities and they are not intended to be insidious."

The proposed legislation, as indicated, is more than merely an "update", and the new list of duties goes far beyond "minor word changes" to the existing Title 29. It lists ten specific duties of the clerk, whereas the current provision lists only five more general assignments. (Actually, within the new list are six additional duties not mentioned in the current Title 29 or elsewhere in state law.) It thereby greatly expands the list of legally mandated duties for the clerk above and beyond the general duties now assigned. Some of the specific duties actually could conflict with Sec. 29.20.500 of Title 29. Paragraph (2) of this Section provides that the Manager shall "supervise the enforcement of municipal law and carry out the directives of the governing body."

The specific list of duties assigned to the clerk also reduces the flexibility of the local government to organize itself as it sees fit and to provide for organizational development. Rather than an update, in many respects CSHB 128 is a regression away from the flexibility and meticulously crafted document that became a complete Title 29 update in 1986. This update should not be tinkered with in such a piecemeal basis.

Legally mandating such a list of duties also detracts from the accountability of the clerk. If all of the clerk's duties are mandated by state law, then the clerk is less accountable to legislative body (or mayor/manager) responsible for the hiring and supervising of this position. Accountability would be reduced to merely assuring the clerk satisfactorily carries out authorities and duties mandated by state law.

#### Specific Comments on the Mandated Duties

1) CSHB 128 wording: "attend meetings of the governing body and its boards and committees as required and keep the journal".

Present wording: "attend meetings of the governing body and keep the journal".

Comment: This new requirement, mandating that the clerk attend all meetings of all boards and committees as required (required by the governing body?), is actually superfluous. Title 29 already requires the clerk to perform other duties as required. In addition, there are some real practical and logistical problems in having the clerk attend all such meetings. Does this requirement, for example, include meetings of the planning commission? All service area boards?

2) CSHB 128 wording: "have custody of the municipal seal".

Present wording: none.

Comment: This is a new mandate. No specific objections are raised for this new requirement, other than the fact that who has custody of the municipal seal should be a local question.

3) CSHB 128 wording: "assure that notice and other requirements for public meetings are complied with and assure that public records are available for public inspection as required by law".

Present wording: "give notice of the time and place of meetings of the governing body to the governing body and to the public"; and "arrange publication of notices, ordinances, and resolutions".

Comment: "Assure that public records are available" might create real logistical problems. Does this mean all public records, including those of other municipal departments? Does this provision give the clerk a state mandated authority to "inspect" these other departments to make sure that their records are "available for public inspection?"

4) CSHB 128 wording: "manage municipal records and develop retention schedules and procedures for inventory, storage, and destruction of records as necessary".

Present wording: none.

Comment: This seems to require that sole authority be placed with the clerk to develop retention schedules and procedures for

the inventory, storage and destruction of records. Does this mean there is no authority by the council (assembly), the manager, the mayor, or any department head over their own records? There is also a potential conflict with 29.20.500(5), which mandates that the manager (under the manager plan) "exercise custody over all real and personal property of the municipality". Could such "personal property" include records? What about the records of the real and personal property?

5) CSHB 128 wording: "maintain an indexed file of all permanent municipal records, provide for codification of ordinances, and authenticate or certify records as necessary."

Present wording: "maintain and make available for public inspection an indexed file containing municipal ordinances, resolutions, rules, regulations, and codes" and "attest deeds and other documents"

Comment: No particular objection, since this is basically a restatement of what is already in Title 29.

6) CSHB 128 wording: "prepare agendas and agenda packets as required by the governing body".

Present wording: none.

Comment: This is a major new power that would be given to the clerk, potentially taking authority away from the legislative body, the mayor, and/or the manager, all of whom in a number of municipalities have a role in preparing the agenda and agenda packets. This could create very serious role conflicts. Again, is it really the state's concern who is responsible for these duties at the local level?

7) CSHB 128 wording: "administer all municipal elections".

Present wording: none.

Comment: This would be a completely new, major authority. While the clerks do administer the elections in many local governments, is there a real need to impose this requirement on all municipalities employing clerks? The clerk is not necessarily, in all cases, the most qualified municipal official to administer local elections. Perhaps the municipal attorney, for example, might be more qualified in certain instances.

8) CSHB 128 wording: "assure that the municipality complies with 42 U.S.C. 1971-1974 (Voting Rights Act of 1965, as amended)".

Present wording: none.

Comment: All municipalities have to comply with this federal law. Is it really advisable to make the clerk responsible for this? Compliance with such a comprehensive piece of federal legislation in many cases should be the responsibility of the municipal attorney.

9) CSHB 128 wording: "take oaths, affirmations, and acknowledgements as necessary".

Present wording: none.

Comment: There is probably no particular problem with this provision. Apparently AS 09.63.010 already gives the clerk this authority.

10) CSHB 128 wording: "act as parliamentary advisor to the governing body".

Present wording: none.

Comment: This takes away the flexibility of local government in its ability to designate the person most qualified to act as "parliamentary advisor" (parliamentarian?). Usually, such a person advises the presiding officer, not the body as a whole. In addition, do all clerks have the background and expertise necessary to act as the parliamentarian? In many municipalities, the attorney quite logically and satisfactorily fulfills this role.

11) CSHB 128 wording: "perform other duties required by law or the governing body".

Present wording: "perform other duties specified in this title or prescribed by the chief administrator or by the governing body."

Comment: The proposed wording takes away the authority of the chief administrator (mayor or manager) to assign duties, even in those municipalities where the clerk is appointed by the administrator.

It should also be noted that this rather long and detailed list of duties would greatly eliminate the authority of the manager, administrator, mayor, or even the elected governing body to prescribe duties for the clerk. Such a list also reduces flexibility of hiring, particularly in smaller communities. What if a local government can only hire a part time clerk? Would this part time employee still be responsible for all of the mandated duties?

### Summary and Conclusions

Title 29 underwent a complete revision several years ago. At that time, all of the major concerns expressed by municipalities with that state law were addressed, and the new Title 29 seems to be working quite well. As noted earlier, Title 29 is a carefully crafted and integrated document that should not be tinkered with in a piecemeal fashion. This is particularly so given the fact that no real problem with these existing provisions have been identified by the clerks. "If it's not broke, why fix it?" Everything in CSHB 128 can be directly addressed at the local level. Any "job duty" problems perceived by the clerks should be addressed directly with their own employers. The clerks have stated that "our goal is

obviously to enhance the importance of the clerk's position." CSHB 128 is therefore "special interest" legislation that may be of some benefit to the Clerks themselves, but which provides no demonstrated significant benefit to local government.

--Submitted by the Ketchikan Gateway Borough  
April 9, 1991

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 12, 1991

FURTHER REFERRALS:

Date of Committee Action: 3-2-92

The JUDICIARY Committee considered:

HB 128

HOUSE BILL NO. 128

OFFICE OF MUNICIPAL CLK & CLK/TREASURER

"An Act relating to the offices of municipal clerk and clerk-treasurer."

RECOMMENDATIONS:  the same title  
 be replaced with \_\_\_\_\_  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) \_\_\_\_\_

zero fiscal note C & RA

zero fiscal note(s) CLM & RA

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>James Donley</i>	X				
<i>J. Ellis</i>	X				
<i>Robin Pat Powell</i>	✓				
<i>Mike Miller</i>	✓				
<i>W. Greenberg</i>	-				

*James Donley*  
 CHAIRMAN'S SIGNATURE

**FISCAL NOTE**

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. CS HB 128

Revision Date: 1/15/92  
 Title: "...relating to the office of municipal clerk."  
 Sponsor: Rep. C.Davis, et al  
 Requestor: House Judiciary

Department Affected: Community and Regional Affairs  
 BRU: Local Government Assistance  
 Component: Statewide Assistance

COMPONENT SERIAL NO. 

0	6	7	6
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**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						
<b>FUND SOURCE:</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>FUND SOURCE:</b>						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson  
 Division: Administrative Services Division

Phone: 465-4708  
 Date: 1/15/92

Approved by Commissioner: [Signature]  
 Agency: Department of Community and Regional Affairs

Date: 1/15/92



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

**BILL ANALYSIS**

DEPARTMENT DCRA	DIVISION MRAD	BILL NUMBER HB 128	SPONSOR Reps C.Davis, Ellis etc
SHORT TITLE OF BILL Offices of municipal clerk and clerk-treasurer.			
DEPARTMENT POSITION None.			
PREPARED BY Mike Worley	DATE 3/26/91	COMMISSIONER'S SIGNATURE <i>Edgar Blatchford</i> Edgar Blatchford	DATE 3/26/91

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

ANALYSIS OF BILL/PROGRAM EFFECTS

Does not affect this department.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

H B

1 2 9



## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-8811

February 14, 1991

The Honorable Gene Kubina  
Chairman, House State  
Affairs Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Kubina:

Thank you for scheduling House Bill 129, establishing a Public Officers' Compensation Commission. This bill was introduced at the request of the Alaska Supreme Court.

HB 129 creates a new Public Officers' Compensation Commission to take the place of the existing State Officers' Compensation Commission. As you know, the existing commission recommends compensation levels for certain state officers to the legislature; its proposals frequently go unheeded for reasons unrelated to their merits.

In contrast, the commission created by HB 129 would have the authority to actually establish compensation levels for the governor, lieutenant governor, members of the legislature, heads of the principal departments, 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, per diem and allowances for those officers to the legislature every two years. These compensation levels would take effect unless disapproved by a bill that was enacted into law within 60 days.

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

The Honorable Gene Kubina  
February 14, 1991  
Page 2

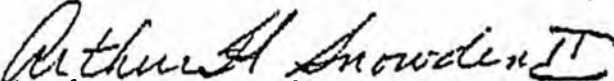
compensation amounts. The purpose behind the existence of these commissions is simple: to see that fair decisions are made regarding the compensation of certain government officials, and to reduce the political battles that inevitably surround such salary decisions.

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. Last session, the legislature approved the first pay increase for judges since 1985. During the 18 month period preceding that pay raise, the judiciary lost 20 percent of its members.

It is equally important to attract and retain highly qualified legislators and executive branch officials. An independent commission will be able to set fair and reasonable salaries for these officers without fear of voter backlash or charges of conflict of interest.

I hope that you will agree with the supreme court on the need for HB 129. Please feel free to contact my office if you require any additional information on this piece of legislation.

Very truly yours,

  
Arthur H. Snowden, II  
Administrative Director

AHS:bh

**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

print name

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

**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

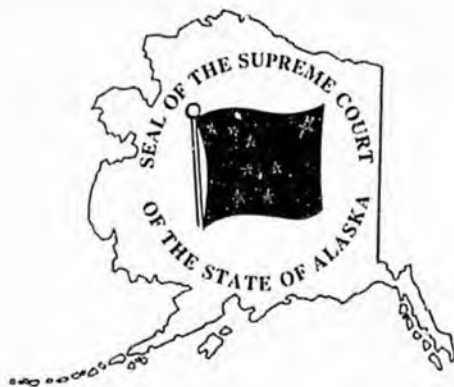
**Signature**  **Date** 2/15/91

**Commissioner**, Millett Keller

**Signature**  **Date** 2/19/91

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

Rev. 01/28/91



## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 264-0547  
FAX (907) 276-5808

March 3, 1991

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

Dear Representative Donley:

I am writing to request that the Judiciary Committee schedule House Bill 129, establishing a Public Officers' Compensation Commission, at its earliest convenience. This bill was introduced at the request of the Alaska Supreme Court.

CSHB 129 (STA) creates a new Public Officers' Compensation Commission to take the place of the existing State Officers' Compensation Commission. As you know, the existing commission recommends compensation levels for certain state officers to the legislature; its proposals frequently go unheeded for reasons unrelated to their merits.

In contrast, the commission created by CSHB 129 (STA) would have the authority to actually establish compensation levels for the governor, lieutenant governor, members of the legislature, heads of the principal departments, 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 first day of the following regular session, unless disapproved by a bill that was enacted into law before that date.

Approximately 26 states, as well as the federal government, currently operate compensation commissions. In nine of those

The Honorable Dave Donley  
March 3, 1991  
Page 2

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. Last session, the legislature approved the first pay increase for judges since 1985. During the 18 month period preceding that pay raise, the judiciary lost 20 percent of its members.

It is equally important to attract and retain highly qualified legislators and executive branch officials. An independent commission will be able to set fair and reasonable salaries for these officers without fear of voter backlash or charges of conflict of interest.

I hope that you will agree with the supreme court on the need for CSHB 129 (STA). Please feel free to contact my office if you require any additional information on this piece of legislation.

Very truly yours,



FOR Arthur H. Snowden, II  
Administrative Director

AHS:bh

# 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

WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

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

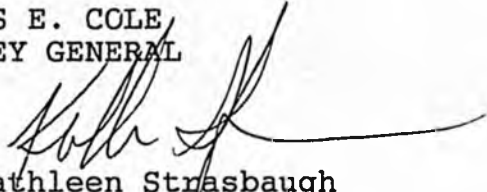
If you do not receive the amendments before you pass HB129 out of your committee, we would very much appreciate it if you would send this correspondence and the amendments along to the next committee to which the bill has been referred.

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.

PF1 Alternate  
PF6 Reply PF7 Resend PF8 Print

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201

From: WCMCOO2 --JDCVM1  
To: WPFCJIM --JDCVM1

and time 02/20/91 10:13:38  
WPFCCKJS --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 further 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

File in this bill, so something along those lines may be included.

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 WCMC002 --JDCVM1 02/19/91 16:44 \*\*\*

To: GASCBFA --JDCVM1

From: Ron Lorensen  
Asst. A.G.

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

E01

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. It 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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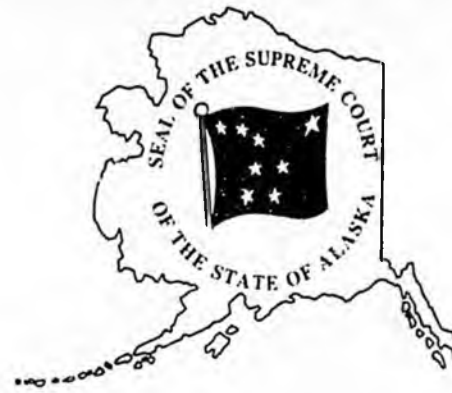
E01

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.

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



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

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.

The Honorable Dave Donley  
March 17, 1991  
Page 3

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

The Honorable Dave Donley  
March 17, 1991  
Page 4

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

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

MEMORANDUM

TO: The Honorable Dave Donley                      DATE: March 12, 1991  
Chairman  
House Judiciary Committee  
Seventeenth Alaska  
State Legislature

PHONE: 465-3616

FROM: Mike Nizich *Man*                                      SUBJECT: CSHB 129 (STA)  
Director, Division of  
Administrative Services  
Office of the Governor

Section 14 of CSHB 129 (STA) changes the reporting years for the Public Officer Compensation Commission to every even-numbered year rather than the odd-number years specified in the original bill. As such, a revised fiscal note is necessary to correctly demonstrate the years of anticipated expenditures.

Please substitute the previous Office of the Governor fiscal note with the attached revised note dated 3/11/91. Thank you for your assistance.

Attachment

cc: Representative Kubina  
Chairman  
House State Affairs Committee

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CSHB 129 (STA)

Revision Date: 3/11/91 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 Judiciary Committee 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	7.4	-0-	7.4	-0-	7.4
CONTRACTUAL	36.1	33.9	7.2	33.9	7.2	33.9
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>60.9</b>	<b>41.3</b>	<b>7.2</b>	<b>41.3</b>	<b>7.2</b>	<b>41.3</b>

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	60.9	41.3	7.2	41.3	7.2	41.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>60.9</b>	<b>41.3</b>	<b>7.2</b>	<b>41.3</b>	<b>7.2</b>	<b>41.3</b>

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: Division of Administrative Services Date: 3/11/91  
 Approved by Commissioner: D. Max Hodel, Chief of Staff  
 Agency: Office of the Governor Date: 3/12/91

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
--	-------	--	-------

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
--	-------	--	-------

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
--	--	-------

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
------------------------	--	-------

Transportation:

Freight and express charges -- 150/mo x 12		1,800
--	--	-------

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
--	--	-------

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**

**Bill No. CSHB 129 (State Affairs)**

Revision Date: 03/11/91 Department Affected: Alaska Court System  
 Title: An Act establishing the Public Officers Compensation Commission... BRU: \_\_\_\_\_  
 Sponsor: By Rules Committee by request Components: \_\_\_\_\_  
 Requestor: Judiciary COMPONENT SERIAL NO. 

000   000	000   768
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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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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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						
<b>TOTAL</b>	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 Phone: 264-8228  
 Division: Alaska Court System Date: 03/11/91

Approved by: Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System Date: 03/11/91

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. 

000   000	000   768
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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).

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  
Sponsor: House Rules Committee Component: Public Officers Compensation Commission  
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						
<b>TOTAL OPERATING</b>	<b>60.9</b>	<b>7.2</b>	<b>41.3</b>	<b>7.2</b>	<b>41.3</b>	<b>7.2</b>

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						
<b>TOTAL</b>	<b>60.9</b>	<b>7.2</b>	<b>41.3</b>	<b>7.2</b>	<b>41.3</b>	<b>7.2</b>

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
--	--	-------

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

BILL NO. HB 129

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: Public Officers Compensation Commission  
 Sponsor: Rules by Request (of Court System)  
 Requestor: \_\_\_\_\_

Department Affected: Administration  
 BRU: Personnel  
 Component: Personnel

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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	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
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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*  
 Division: Personnel

Phone: 465-4430  
 Date: February 19, 1991

Approved by Commissioner: Millett Keller *Millett 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

BILL NO. HB 129

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.

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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

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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
--	--	-------

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
--	--	-------

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: \_\_\_\_\_  
Title: Public Officers Compensation Commission

Department Affected: Administration  
BRU: Personnel  
Component: Personnel

Sponsor: Rules by Request (of Court System)  
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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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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
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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*  
Division: Personnel

Phone: 465-4430  
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. 

000   000	000   768
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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).

HOUSE COMMITTEE REPOP

(7)

Date Referred: March 4, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-18-91

The JUDICIARY 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 C.SHB 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. 3-4-91

zero fiscal note \_\_\_\_\_

zero fiscal note(s) Admin. 3-4-91, AK. COURT SYSTEM 3-4

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Dennis Dowley</i>					
<i>Max Thurmond</i>		<i>Terry Martin</i>		<i>✓</i>	<i>✓</i>
<i>J. L. Ellis</i>		<i>Mark Stanley</i>		<i>X</i>	
<i>Kevin P. ...</i>					

*Dennis Dowley*  
 CHAIRMAN'S SIGNATURE

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 11, 1991

FURTHER REFERRALS

Judiciary  
Finance

Date of Committee Action: March 1, 1991

The STATE AFFAIRS 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 (State Affairs)  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 Office of Gov - Admin Services  fiscal note(s) \_\_\_\_\_

zero fiscal note Admin. and Alaska Court  zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
<u>Gene Kubina</u>				
	<u>Mike Miller</u>		<input checked="" type="checkbox"/>	
	<u>Fred Smith</u>		<input checked="" type="checkbox"/>	
	<u>Tom Deppa</u>		<input checked="" type="checkbox"/>	

Eugene A. Kubina  
Chairman's Signature

FISCAL NOTE

Bill No. HB 129

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

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. 000 | 000 000 | 768

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).

**PUBLIC EMPLOYEES' LOCAL  
71, Appellant,**

v.

**STATE of Alaska, Appellee.**

No. S-2726.

Supreme Court of Alaska.

June 9, 1989.

Unions appealed decision of Superior Court, Third Judicial District, Anchorage, Martha Beckwith, J. pro tem., affirming decision of State Labor Relations Agency which dismissed unfair labor practice charges filed against State. The Supreme Court, Burke, J., held that collective bargaining agreement to which State is party is subject to legislative approval of its monetary terms.

Affirmed.

**1. Administrative Law and Procedure  
⊕800**

"Rational basis" test is standard applied on appeal of agency decision involving question of statutory interpretation, when issue involves agency expertise or the determination of fundamental policies within agency's statutory function.

**2. Administrative Law and Procedure  
⊕800**

Reviewing court can independently review decision of agency and substitute its own judgment when statutory interpretation does not involve agency expertise, or the agency's specialized knowledge and experience would not be particularly probative.

**3. Labor Relations ⊕246**

Collective bargaining agreement to which State is a party is subject to legislative approval of its monetary terms. AS 23.40.215.

1. CEA also entered into a collective bargaining agreement with the state providing for salary

**4. Labor Relations ⊕179**

State did not violate its duty to bargain in good faith with employees' unions when governor sought budget cuts, where bargaining for pay raise was not among the reductions sought.

Kevin Dougherty, Anchorage, for appellant.

Virginia B. Ragle and Susan D. Cox, Asst. Attys. Gen., and Grace Berg Schaible, Atty. Gen., Juneau, for appellee.

**OPINION**

Before MATTHEWS, C.J., and  
RABINOWITZ, BURKE, COMPTON  
and MOORE, JJ.

BURKE, Justice.

**I. INTRODUCTION**

Public Employees Local 71 (Local 71) and Confidential Employees Association (CEA) appeal the decision of the superior court, affirming the decision of the State, Labor Relations Agency (Agency), which dismissed the unfair labor practice charges filed against the state. The first issue on appeal is whether a collective bargaining agreement is subject to legislative approval of its monetary terms. The second issue is whether the state violated its duty to bargain in good faith.

**II. FACTS**

On June 4, 1984, Local 71 entered into a collective bargaining agreement with the state, which was in effect from January 1, 1984, through December 31, 1986. The terms of the contract called for salary increases of 0% during the first fiscal year of the contract (July 16, 1984—July 16, 1985), 5% during the second fiscal year (July 16, 1985—July 16, 1986), and 3.8% during the third fiscal year (July 16, 1986—July 16, 1987).<sup>1</sup>

In 1985, the legislature appropriated the necessary funds for the 5% salary increase. However, the legislature also adopted Leg-

increases. CEA joins in Local 71's arguments.

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Local 71 (Local 71) and Association (CEA) the superior court of the State, Labor Agency), which dismissed the unfair labor practice charges. The first issue on collective bargaining legislative approval. The second issue is its duty to bar-

Local 71 entered into an agreement with the State from January 1, 1986. The agreement called for salary increases in the first fiscal year of 1984—July 16, 1985), the second fiscal year (July 16, 1985—July 16, 1986—July 16,

the legislature appropriated the 5% salary increase. The legislature also adopted Leg-

Local 71's arguments.

islative Resolution No. 19, which stated "that the Alaska State Legislature will not fund the monetary terms of the existing contracts for future years" and directed the parties to renegotiate the monetary terms proposed for fiscal year 1987. The state and unions were unable to renegotiate the salary increases.

At the beginning of the 1985 legislative session, the governor requested funding for the 3.8% salary increase in House Bill 500. Subsequently, after a projected revenue decline, the governor submitted to the legislature a revised operating budget consisting of \$120,000,000 in proposed reductions. The reductions did not refer to the 3.8% pay increase. In 1986, the legislature refused to fund the 3.8% salary increase.<sup>2</sup>

On April 17, 1986, Local 71 filed an unfair labor practice charge against the State of Alaska. A hearing was held on July 18, 1987. On October 21, 1986, the agency issued its order dismissing the unfair labor practice charge. Local 71 appealed. The superior court affirmed the agency's dismissal of the unfair labor practice charge. This appeal followed.

### III. STANDARD OF REVIEW

[1] When an appeal of an agency decision involves a question of statutory interpretation one of two standards will apply. *Tesoro Alaska Petroleum Co. v. Kenai*

2. The legislature stated in section 20 of the budget act:

Failure of the legislature to adopt a separate appropriation item for the pay raise constitutes rejection of the monetary terms of the collective bargaining agreements in accordance with AS 23.40.215.

AS 23.40.215 is set forth in full at note 3.

3. AS 23.40.215 provides:

(a) The monetary terms of any agreement entered into under the Public Employment Relations Act are subject to funding through legislative appropriation.

(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session. The legislature shall advise the parties by concurrent resolution if it approves or disapproves of the monetary terms within 60

*Pipe Line Co.*, 746 P.2d 896 (Alaska 1987). The "rational basis" test is used when the issue involves agency expertise or the determination of fundamental policies within the agency's statutory function. *Id.* at 903. If the agency's decision is supported by the facts and has a reasonable basis in the law, the decision will be upheld. *Id.*

[2] However, when the statutory interpretation does not involve agency expertise, or the agency's specialized knowledge and experience would not be particularly probative, the reviewing court can independently review the decision and substitute its own judgment. *Id.*

### IV. DISCUSSION

#### A. Legislative Approval

[3] The first issue is whether a collective bargaining agreement is subject to legislative approval of its monetary terms. This issue is a question of statutory interpretation and should be reviewed under the independent judgment standard. Alaska Statute 23.40.215(a) provides that the "monetary terms of any agreement entered into under the Public Employment Relations Act are subject to funding through legislative appropriation."<sup>3</sup> The initial approval of the monetary terms of any agreement is a "nonbinding, advisory expression of legislative intent."<sup>4</sup> AS 23.40.215(b).

legislative days after the agreement is submitted to the legislature. The approval of the monetary terms of an agreement under this subsection is a nonbinding, advisory expression of legislative intent. If within 60 legislative days after the agreement is submitted the legislature advises the parties by concurrent resolution that it disapproves the monetary terms of the agreement, the parties may resume negotiations.

4. In its brief, Local 71 relied solely on *Boston Teachers Union, Local 66 v. School Committee of Boston*, 386 Mass. 197, 434 N.E.2d 1258 (1982). In *Boston Teachers*, the teachers' union sought declaratory and injunctive relief to compel the mayor to submit a budget to the city council which would provide appropriations for the salary increases in the second year of a collective bargaining agreement. The Massachusetts court held that approval by the legislature of the monetary terms of the contract was statutorily required throughout the contract's three-year term:

Additionally, under Alaska's constitutional system funding of an agreement is constitutionally relegated to the legislature. Alaska Const. art. IX, § 13. The Public Employment Relations Act recognizes this constitutional requirement in AS 23.40.215(a).

From our independent review of the statute, it is clear that the monetary terms of a collective bargaining agreement are not effective until the funds are appropriated by the legislature.<sup>5</sup> Each year the monetary terms of a collective bargaining agreement are subject to independent legislative approval.

### B. Duty to Bargain in Good Faith

[4] The second issue is whether the state violated its duty to bargain in good

We think that the requirement in § 7(b), that the employer submit a request to the appropriate legislative body for an appropriation sufficient to fund the cost items of the agreement, applies only to the funds needed in the first year of the agreement, and that an appropriation funding the first year of the contract constitutes an approval by the legislative body of the entire agreement. The context of this provision suggests that this is the proper interpretation. . . . In order for § 7(b) to be construed consistently with § 7(a), authorizing contracts of three years' duration, the statute must be read as contemplating an initial approval of the contract by the legislative body, followed by appropriations as a matter of course in the succeeding years of the contract.

*Id.* at 1263. See Mass.G.L. c. 150E § 7.

The Massachusetts court also found support for its position in the legislative history of the statute, which provided that if there is a conflict between the terms of a collective bargaining agreement and the statute, the terms of the agreement prevail. *Id.* at 1263. Based on *Bos-*

*ton Teachers*, Local 71 asserts that once the legislature approves the monetary terms of the first year of a collective bargaining agreement, the legislature must fund the subsequent years. However, *Boston Teachers* is distinguishable from the case at hand because the governing statutes in the two states are clearly different. Therefore, *Boston Teachers* is not persuasive.

The decision is AFFIRMED.



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5. The superior court for the first judicial district has also held that the monetary terms of an agreement are not enforceable until the legislature appropriates the required funding. *Alaska Public Employees Ass'n v. State*, No. 1JU 79 538 Civ. and *Public Employees' Local 71, AFL-CIO v. State*, No. 1JU 79 983 Civ. (Alaska Super., Ct. Dec. 24, 1979).

6. Additionally, Local 71 and CEA assert that the agency's decision is not supported by substantial evidence and that the agency failed to properly review whether the state supported the pay raise throughout the entire legislative session. Both of these arguments are without merit.

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