

CS FOR SENATE BILL NO. 14(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR SHOWER

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the selection and retention of judicial officers for the court of**
2 **appeals and the district court and of magistrates; relating to the duties of the judicial**
3 **council; relating to the duties of the Commission on Judicial Conduct; and relating to**
4 **retention or rejection of a judicial officer."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 15.15.030(10) is amended to read:

7 (10) A nonpartisan ballot shall be designed for each judicial district in
8 which a justice, [OR] judge, or magistrate is seeking retention in office. The ballot
9 shall be divided into five [FOUR] parts. Each part must bear a heading indicating the
10 court or position to which the candidate is seeking approval, and provision shall be
11 made for marking each question "Yes" or "No." Within each part, the question of
12 whether the justice, [OR] judge, or magistrate shall be approved or rejected shall be
13 set out in substantially the following manner:

14 (A) "Shall be retained as justice of the supreme court

for 10 years?";

(B) "Shall be retained as judge of the court of appeals for eight years?";

(C) "Shall be retained as judge of the superior court for six years?"; [OR]

(D) "Shall be retained as judge of the district court for four years?"; **or**

(E) "Shall be retained as a magistrate for four years?"

* **Sec. 2.** AS 15.35.100 is amended to read:

Sec. 15.35.100. Approval or rejection of district judge or magistrate. (a)

Each district judge **and each magistrate** shall be subject to approval or rejection at the first general election held more than two years after the judge's **or magistrate's** appointment under the provisions of AS 22.15.170. If approved, the judge **or magistrate** shall thereafter be subject to approval or rejection in a like manner every fourth year.

(b) The district judge **or magistrate** shall seek approval in the judicial district in which the judge **or magistrate** was originally appointed, or in the district where the judge **or magistrate** has served the major portion of the judge's **or magistrate's** term. The district judge **or magistrate** shall designate on the declaration of candidacy the judicial district in which the judge **or magistrate** was appointed, or the district where the judge **or magistrate** has served the major portion of the judge's **or magistrate's** term.

* **Sec. 3.** AS 15.35.110 is amended to read:

Sec. 15.35.110. Filing declaration by district judge or magistrate. Each district judge **and each magistrate** seeking retention in office shall file with the director a declaration of candidacy for retention **not** [NO] later than August 1 before the general election at which approval or rejection is **required** [REQUISITE].

* **Sec. 4.** AS 15.35.120 is amended to read:

Sec. 15.35.120. Requirement of filing fee for district court or magistrate candidate. At the time the declaration is filed, each candidate for retention on the

1 district court or as a magistrate position shall pay a filing fee of \$30 to the director.

2 * **Sec. 5.** AS 15.35.130 is amended to read:

3 **Sec. 15.35.130. Placing name of district judge or magistrate on ballot.** The
4 director shall place the name of a district judge or magistrate who has properly filed a
5 declaration of candidacy for retention on the ballot in the judicial district designated in
6 the declaration of candidacy for the general election at which approval is sought.

7 * **Sec. 6.** AS 15.35.135 is amended to read:

8 **Sec. 15.35.135. Withdrawal of candidacy; removal of name from general**
9 **election ballot.** (a) Notice of withdrawal of candidacy for retention for a supreme
10 court justice, judge of the court of appeals, superior court judge, [OR] district court
11 judge, or magistrate must be in writing over the signature of the candidate.

12 (b) The name of a candidate for retention for supreme court justice, judge of
13 the court of appeals, superior court judge, [OR] district court judge, or magistrate
14 must appear on the general election ballot unless notice under (a) of this section of
15 withdrawal of candidacy is received by the director at least 64 days before the date of
16 the general election.

17 * **Sec. 7.** AS 15.58.050 is amended to read:

18 **Sec. 15.58.050. Information and recommendations on judicial officers. Not**
19 [NO] later than August 7 of the year in which the state general election will be held,
20 the judicial council shall file with the lieutenant governor a statement including
21 information about each supreme court justice, court of appeals judge, superior court
22 judge, [AND] district court judge, and magistrate who will be subject to a retention
23 election. The statement shall reflect the evaluation of each justice, [OR] judge, or
24 magistrate conducted by the judicial council according to law and shall contain a
25 brief statement describing each public reprimand, public censure, or suspension
26 received by the judge or magistrate under AS 22.30.011(d) during the period covered
27 in the evaluation. A statement may not exceed 600 words.

28 * **Sec. 8.** AS 15.58.060(a) is amended to read:

29 (a) Each general election candidate shall pay to the lieutenant governor at the
30 time of filing material under this chapter the following:

31 (1) President or Vice-President of the United States, United States

1 senator, United States representative, governor, lieutenant governor, supreme court
2 justice, and court of appeals judge, \$300 each;

3 (2) superior court judge, [AND] district court judge, and magistrate,
4 \$150 each;

5 (3) state senator and state representative, \$100 each.

6 * **Sec. 9.** AS 22.07.060 is amended to read:

7 **Sec. 22.07.060. Approval or rejection.** Each judge of the court of appeals is
8 subject to approval or rejection as provided in AS 15 (Alaska Election Code). The
9 judicial council shall conduct an evaluation of each judge before the retention election
10 and shall provide information to the public about the judge and may provide a
11 recommendation regarding retention or rejection. The information and any
12 recommendation shall be made public at least 60 days before the election. The judicial
13 council shall also provide the information and any recommendation to the office of the
14 lieutenant governor in time for publication in the election pamphlet as required by
15 AS 15.58.050. If a majority of those voting on the question rejects the candidacy of a
16 judge, the rejected judge may not for a period of four years thereafter be appointed to
17 fill a vacancy in the supreme court, the court of appeals, the superior court, [OR] the
18 district court, or a magistrate position of the state.

19 * **Sec. 10.** AS 22.07.070 is amended to read:

20 **Sec. 22.07.070. Vacancies.** (a) The governor shall fill a vacancy or appoint a
21 successor to fill an impending vacancy in the office of judge of the court of appeals
22 [WITHIN 45 DAYS] after receiving nominations and recommendations from the
23 judicial council on the person or persons submitted to the judicial council for
24 review under (b) of this section, by appointing, for each actual or impending
25 vacancy, one person who was [OF TWO OR MORE PERSONS] nominated by the
26 council or who was reviewed by the council under (b) of this section at the request
27 of the governor and who is qualified under AS 22.07.040. If the governor does not
28 appoint a person from the first round of persons nominated or reviewed by the
29 judicial council under (b) of this section, the governor shall submit the names of
30 not more than two additional persons to the judicial council for review under (b)
31 of this section and the judicial council shall submit to the governor the names of

1 **at least two and not more than four additional persons under (b) of this section.**
2 **An appointment made under this section is subject to confirmation by a majority**
3 **of the members of the legislature in joint session** [FOR EACH ACTUAL OR
4 IMPENDING VACANCY]. An appointment to fill an impending vacancy becomes
5 effective upon **the later of either confirmation by the legislature or** the actual
6 occurrence of the vacancy.

7 (b) The office of a judge of the court of appeals becomes vacant 90 days after
8 the election at which the judge is rejected by a majority of those voting on the question
9 or for which the judge fails to file a declaration of candidacy. Upon the occurrence of
10 (1) an actual vacancy; (2) the certification of rejection following an election; [OR] (3)
11 the election following failure of a judge to file a declaration of candidacy; **or (4) the**
12 **decision of the governor not to appoint a person under (a) of this section, the**
13 **governor shall, within 90 days, submit to the judicial council the names of not**
14 **more than two persons qualified for the judicial office. The** [, THE] judicial
15 council shall meet within 90 days **after receiving the names submitted by the**
16 **governor to review the qualifications of the person or persons proposed by the**
17 **governor, provide recommendations to the governor concerning the**
18 **qualifications of those persons for appointment to the judicial office,** and submit to
19 the governor the names of **up to four additional** [TWO OR MORE] persons qualified
20 for the judicial office; however, **if the governor requires a second round of**
21 **nominations under (a) of this section, the judicial council shall submit to the**
22 **governor the names of at least two and not more than four additional persons**
23 **qualified for judicial office. The** [THE] 90-day period **for the council to meet** may
24 be extended by the judicial council with the concurrence of the supreme court. In the
25 event of an impending vacancy other than by reason of rejection or failure to file a
26 declaration of candidacy, the **governor may submit to the judicial council the**
27 **names of not more than two persons qualified for the judicial office, and the**
28 judicial council, **after receiving names submitted by the governor,** may meet at any
29 time within the 90-day period immediately preceding the effective date of the vacancy
30 **to review the qualifications of the person or persons proposed by the governor,**
31 **provide recommendations to the governor concerning the qualifications of those**

1 **persons for appointment to the judicial office**, and submit to the governor the names
2 of **up to four additional** [TWO OR MORE] persons qualified for the judicial office.
3 **The judicial council may submit to the governor the name of a candidate for**
4 **judicial office only if the judicial council determines that the judicial candidate**
5 **understands and is committed to strict constitutional interpretation of statutes**
6 **and regulations and adhering to legislative intent.**

7 * **Sec. 11.** AS 22.15.170(a) is amended to read:

8 (a) The governor shall fill a vacancy or appoint a successor to fill an
9 impending vacancy in an office of district judge **or magistrate** [WITHIN 45 DAYS]
10 after receiving nominations **and recommendations** from the judicial council **on the**
11 **person or persons submitted to the judicial council for review under (e) of this**
12 **section**, by appointing, **for each actual or impending vacancy**, one **person who was**
13 [OF TWO OR MORE PERSONS] nominated by the council **or who was reviewed by**
14 **the council under (e) of this section at the request of the governor and who is**
15 **qualified under AS 22.07.040. If the governor does not appoint a person from the**
16 **first round of persons nominated or reviewed by the judicial council under (e) of**
17 **this section, the governor shall submit the names of not more than two additional**
18 **persons to the judicial council for review under (e) of this section and the judicial**
19 **council shall submit to the governor the names of at least two and not more than**
20 **four additional persons under (e) of this section. An appointment made under**
21 **this section is subject to confirmation by a majority of the members of the**
22 **legislature in joint session. An** [FOR EACH ACTUAL OR IMPENDING
23 VACANCY. THE] appointment to fill an impending vacancy becomes effective upon
24 **the later of either confirmation by the legislature or** the actual occurrence of the
25 vacancy.

26 * **Sec. 12.** AS 22.15.170(e) is amended to read:

27 (e) The office of a district court judge **or magistrate** becomes vacant 90 days
28 after the election at which the judge **or magistrate** is rejected by a majority of those
29 voting on the question or for which the judge **or magistrate** fails to file a declaration
30 of candidacy. Upon the occurrence of (1) an actual vacancy; (2) the certification of
31 rejection following an election; [OR] (3) the election following failure of a judge **or**

1 magistrate to file a declaration of candidacy; or (4) the decision of the governor not
2 to appoint a person under (a) of this section, the governor shall, within 90 days,
3 submit to the judicial council the names of not more than two persons qualified
4 for the judicial office or magistrate position. The [, THE] judicial council shall
5 meet within 90 days after receiving the names submitted by the governor to review
6 the qualifications of the person or persons proposed by the governor, provide
7 recommendations to the governor concerning the qualifications of those persons
8 for appointment to the judicial office or magistrate position, and submit to the
9 governor the names of up to four additional [TWO OR MORE] persons qualified for
10 the judicial office or magistrate position; however, if the governor requires a
11 second round of nominations under (a) of this section, the judicial council shall
12 submit to the governor the names of at least two and not more than four
13 additional persons qualified for judicial office. The [; EXCEPT THAT THIS] 90-
14 day period for the council to meet may be extended by the council with the
15 concurrence of the supreme court. In the event of an impending vacancy other than by
16 reason of rejection or failure to file a declaration of candidacy, the governor may
17 submit to the judicial council the names of not more than two persons qualified
18 for the judicial office or magistrate position, and the council, after receiving
19 names submitted by the governor, may meet at any time within the 90-day period
20 immediately preceding the effective date of the vacancy to review the qualifications
21 of the person or persons proposed by the governor, provide recommendations to
22 the governor concerning the qualifications of those persons for appointment to
23 the judicial office or magistrate position, and submit to the governor the names of
24 up to four additional [TWO OR MORE] persons qualified for the judicial office or
25 magistrate position. The judicial council may submit to the governor the name of
26 a candidate for judicial office or for a magistrate position only if the judicial
27 council determines that the judicial or magistrate candidate understands and is
28 committed to strict constitutional interpretation of statutes and regulations and
29 adhering to legislative intent.

30 * Sec. 13. AS 22.15.195 is amended to read:

31 Sec. 22.15.195. Approval or rejection. Each district court judge and

1 **magistrate** is subject to approval or rejection as provided in AS 15 (Alaska Election
2 Code). The judicial council shall conduct an evaluation of each judge **or magistrate**
3 before the retention election and shall provide to the public information about the
4 judge **or magistrate** and may provide a recommendation regarding retention or
5 rejection. The information and the recommendation shall be made public at least 60
6 days before the election. The judicial council shall also provide the information and
7 any recommendation to the office of the lieutenant governor in time for publication in
8 the election pamphlet under AS 15.58.050. If a majority of those voting on the
9 question rejects the candidacy of a judge **or magistrate**, the rejected judge **or**
10 **magistrate** may not for a period of four years thereafter be appointed to fill any
11 vacancy in the supreme court, court of appeals, superior court, or district courts of the
12 state, **or in a magistrate position.**

13 * **Sec. 14.** AS 22.15.205 is amended to read:

14 **Sec. 22.15.205. Impeachment.** A district judge **or magistrate** is subject to
15 impeachment by the legislature for malfeasance or misfeasance in the performance of
16 official duties. Impeachment must originate in the senate and must be approved by
17 two-thirds vote of its members. The motion for impeachment must list fully the basis
18 for the proceeding. Trial on impeachment shall be conducted by the house of
19 representatives. A supreme court justice designated by the court shall preside at the
20 trial. Concurrence of two-thirds of the members of the house is required for a
21 judgment of impeachment. The judgment may not extend beyond removal from office,
22 but does not prevent proceedings in the courts on the same or related charges.

23 * **Sec. 15.** AS 22.30.011(a) is amended to read:

24 (a) The commission shall on its own motion or on receipt of a written
25 complaint inquire into an allegation that a judge **or magistrate**

26 (1) has been convicted of a crime punishable as a felony under state or
27 federal law or convicted of a crime that involves moral turpitude under state or federal
28 law;

29 (2) suffers from a disability that seriously interferes with the
30 performance of [JUDICIAL] duties and that is or may become permanent;

31 (3) within a period of not more than six years before the filing of the

1 complaint or before the beginning of the commission's inquiry based on its own
2 motion, committed an act or acts that constitute

3 (A) wilful misconduct in office;

4 (B) wilful and persistent failure to perform the [JUDICIAL]
5 duties of the judge or magistrate;

6 (C) conduct prejudicial to the administration of justice;

7 (D) conduct that brings the judicial office or magistrate's
8 office into disrepute; or

9 (E) conduct in violation of the code of judicial conduct; or

10 (4) is habitually intemperate.

11 * **Sec. 16.** AS 22.30.011(b) is amended to read:

12 (b) After preliminary informal consideration of an allegation, the commission
13 may exonerate the judge or magistrate, informally and privately admonish the judge
14 or magistrate, or recommend counseling. Upon a finding of probable cause, the
15 commission shall hold a formal hearing on the allegation. A hearing under this
16 subsection is public. Proceedings and records pertaining to proceedings that occur
17 before the commission holds a public hearing on an allegation are confidential, subject
18 to the provisions of AS 22.30.060(b).

19 * **Sec. 17.** AS 22.30.011(c) is amended to read:

20 (c) A judge or magistrate appearing before the commission at the hearing is
21 entitled to counsel, may present evidence, and may cross-examine witnesses.

22 * **Sec. 18.** AS 22.30.011(d) is amended to read:

23 (d) The commission shall, after a hearing held under (b) of this section,

24 (1) exonerate the judge or magistrate of the charges; or

25 (2) refer the matter to the supreme court with a recommendation that
26 the judge or magistrate be reprimanded, suspended, removed [,] or retired from
27 office, or publicly or privately censured by the supreme court.

28 * **Sec. 19.** AS 22.30.011(g) is amended to read:

29 (g) If the commission exonerates a judge or magistrate, a copy of the
30 proceedings and report of the commission may be made public on the request of the
31 judge or magistrate.

1 * **Sec. 20.** AS 22.30.011(h) is amended to read:

2 (h) If a judge **or magistrate** has been publicly reprimanded, suspended, or
3 publicly censured under this section and the judge **or magistrate** has filed a
4 declaration of candidacy for retention in office, the commission shall report to the
5 judicial council for inclusion in the statement filed by the judicial council under
6 AS 15.58.050 each public reprimand, suspension, or public censure received by the
7 judge **or magistrate**

8 (1) since appointment; or

9 (2) if the judge **or magistrate** has been retained by election, since the
10 last retention election of the judge **or magistrate**.

11 * **Sec. 21.** AS 22.30.070 is amended to read:

12 **Sec. 22.30.070. Disqualification, suspension, removal, retirement, and**
13 **censure of judges and magistrates.** (a) A judge **or magistrate** is disqualified from
14 acting as a judge **or magistrate**, without loss of salary, while there is pending

15 (1) an indictment or an information charging the judge **or magistrate**
16 in the United States with a crime punishable as a felony under **state** [ALASKA] or
17 federal law; [,] or

18 (2) a recommendation to the supreme court by the commission for the
19 removal or retirement of the judge **or magistrate**.

20 (b) On recommendation of the commission, the supreme court may reprimand,
21 publicly or privately censure, or suspend a judge **or magistrate** from office without
22 salary when in the United States the judge **or magistrate** pleads guilty or no contest or
23 is found guilty of a crime punishable as a felony under state or federal law or of a
24 crime that involves moral turpitude under state or federal law. If the conviction is
25 reversed, suspension terminates, and the judge **or magistrate** shall be paid the judge's
26 **or magistrate's** salary for the period of suspension. If the judge **or magistrate** is
27 suspended and the conviction becomes final, the supreme court shall remove the judge
28 **or magistrate** from office.

29 (c) On recommendation of the commission, the supreme court may (1) retire a
30 judge **or magistrate** for disability that seriously interferes with the performance of
31 duties and that is or may become permanent, and (2) reprimand, publicly or privately

1 censure, or remove a judge or magistrate for action, occurring not more than six
2 years before the [COMMENCEMENT OF THE JUDGE'S] current term of the judge
3 or magistrate begins, that [WHICH] constitutes wilful misconduct in the office,
4 wilful and persistent failure to perform duties, habitual intemperance, conduct
5 prejudicial to the administration of justice, or conduct that brings the judicial office or
6 magistrate's office into disrepute. The effective date of retirement under (1) of this
7 subsection is the first day of the month coinciding with or after the date that the
8 supreme court files written notice with the commissioner of administration that the
9 judge or magistrate was retired for disability. A duplicate copy of the notice shall be
10 filed with the judicial council.

11 (d) A judge or magistrate retired by the supreme court shall be considered to
12 have retired voluntarily. A judge or magistrate removed by the supreme court is
13 ineligible for judicial office or for a magistrate position for a period of three years.

14 (e) A supreme court justice who has participated in proceedings involving a
15 judge or justice of any court or a magistrate may not participate in an appeal
16 involving that judge, [OR] justice, or magistrate in that particular matter.

17 * **Sec. 22.** AS 22.35 is amended by adding a new section to read:

18 **Sec. 22.35.035. Prohibited use of state funds.** (a) State funds may not be used
19 to support or oppose the retention or rejection of a judicial officer in an election under
20 AS 15 (Alaska Election Code). In this subsection, "judicial officer" means a supreme
21 court justice, including the chief justice, a judge of the court of appeals, a judge of the
22 superior court, a district court judge, or a magistrate.

23 (b) This section does not apply to the duties of the judicial council under
24 AS 15.58.050, AS 22.05.100, AS 22.07.060, AS 22.10.150, and AS 22.15.195.

25 * **Sec. 23.** AS 22.15.170(c) and 22.15.170(d) are repealed.