

CS FOR HOUSE BILL NO. 82()

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES RAUSCHER, Carpenter

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the selection, retention, and rejection of judicial officers for the**
2 **court of appeals and the district court; relating to the selection of magistrates; relating**
3 **to the duties of the judicial council; relating to the duties of the Commission on Judicial**
4 **Conduct; relating to the conduct of magistrates; and relating to the impeachment,**
5 **disqualification, suspension, removal, retirement, and censure of magistrates."**

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

7 *** Section 1.** AS 22.07.070 is amended to read:

8 **Sec. 22.07.070. Vacancies.** (a) The governor shall fill a vacancy or appoint a
9 successor to fill an impending vacancy in the office of judge of the court of appeals
10 within 45 days after receiving nominations **and recommendations** from the judicial
11 council, by appointing, **for each actual or impending vacancy,** one **person who was**
12 **[OF TWO OR MORE PERSONS] nominated or reviewed by the council under (b)**
13 **of this section. A person who is appointed under this section must be qualified**

1 **under AS 22.07.040. If the governor does not appoint a person from the persons**
2 **nominated or reviewed by the council under (b) of this section, the governor may**
3 **request another round of candidates as provided under (b) of this section. An**
4 **appointment made under this section is subject to confirmation by a majority of**
5 **the members of the legislature in joint session** [FOR EACH ACTUAL OR
6 IMPENDING VACANCY]. An appointment to fill an impending vacancy becomes
7 effective upon **the later of either confirmation by the legislature or** the actual
8 occurrence of the vacancy.

9 (b) The office of a judge of the court of appeals becomes vacant 90 days after
10 the election at which the judge is rejected by a majority of those voting on the question
11 or for which the judge fails to file a declaration of candidacy. **The governor shall**
12 **submit to the judicial council the names of two persons qualified for the judicial**
13 **office within 45 days of** [UPON] the occurrence of (1) an actual vacancy; (2) the
14 certification of rejection following an election; [OR] (3) the election following failure
15 of a judge to file a declaration of candidacy; **or (4) the decision of the governor not**
16 **to appoint a person under (a) of this section. The** [, THE JUDICIAL] council shall
17 meet within 90 days **after the governor's submission to review the qualifications of**
18 **the persons proposed by the governor, provide recommendations to the governor**
19 **concerning the qualifications of those persons for appointment to the judicial**
20 **office,** and submit to the governor the names of **four additional** [TWO OR MORE]
21 persons qualified for the judicial office; however, the 90-day period **for the council to**
22 **meet** may be extended by the [JUDICIAL] council with the concurrence of the
23 supreme court. In the event of an impending vacancy other than by reason of rejection
24 or failure to file a declaration of candidacy, the **governor shall submit the names of**
25 **two persons qualified for the judicial office, and the** [JUDICIAL] council, **after**
26 **receiving the names submitted by the governor,** may meet at any time within the
27 90-day period immediately preceding the effective date of the vacancy **to review the**
28 **qualifications of the persons proposed by the governor, provide**
29 **recommendations to the governor concerning the qualifications of those persons**
30 **for appointment to the judicial office,** and submit to the governor the names of **four**
31 **additional** [TWO OR MORE] persons qualified for the judicial office.

1 * **Sec. 2.** AS 22.15.170(a) is amended to read:

2 (a) The governor shall fill a vacancy or appoint a successor to fill an
3 impending vacancy in an office of district judge within 45 days after receiving
4 nominations **and recommendations** from the judicial council by appointing, **for each**
5 **actual or impending vacancy, one person who was** [ONE OF TWO OR MORE
6 PERSONS] nominated **or reviewed** by the council **under (e) of this section. A**
7 **person who is appointed under this subsection must be qualified under**
8 **AS 22.07.040. If the governor does not appoint a person from the persons**
9 **nominated or reviewed by the council under (e) of this section, the governor may**
10 **request another round of candidates as provided under (e) of this section. An**
11 **appointment made under this subsection is subject to confirmation by a majority**
12 **of the members of the legislature in joint session. An** [FOR EACH ACTUAL OR
13 IMPENDING VACANCY. THE] appointment to fill an impending vacancy becomes
14 effective upon **the later of either confirmation by the legislature or** the actual
15 occurrence of the vacancy.

16 * **Sec. 3.** AS 22.15.170(c) is amended to read:

17 (c) The presiding judge of the superior court in each judicial district shall
18 appoint the magistrates for the district court for the judicial district. **Except when**
19 **disqualified from acting as a magistrate under AS 22.30.070, each** [EACH]
20 magistrate serves at the pleasure of the presiding judge of the superior court in the
21 judicial district for which appointed. **An appointment made under this subsection is**
22 **subject to confirmation by a majority of the members of the legislature in joint**
23 **session.**

24 * **Sec. 4.** AS 22.15.170(e) is amended to read:

25 (e) The office of a district court judge becomes vacant 90 days after the
26 election at which the judge is rejected by a majority of those voting on the question or
27 for which the judge fails to file a declaration of candidacy. **The governor shall**
28 **submit to the judicial council the names of two persons qualified for the judicial**
29 **office within 45 days of** [UPON] the occurrence of (1) an actual vacancy; (2) the
30 certification of rejection following an election; [OR] (3) the election following failure
31 of a judge to file a declaration of candidacy; **or (4) the decision of the governor not**

1 **to appoint a person under (a) of this section. The** [, THE JUDICIAL] council shall
 2 meet within 90 days **after the governor's submission to review the qualifications of**
 3 **the persons proposed by the governor, provide recommendations to the governor**
 4 **concerning the qualifications of those persons for appointment to the judicial**
 5 **office,** and submit to the governor the names of **four additional** [TWO OR MORE]
 6 persons qualified for the judicial office; **however, the** [EXCEPT THAT THIS] 90-day
 7 period **for the council to meet** may be extended by the council with the concurrence
 8 of the supreme court. In the event of an impending vacancy other than by reason of
 9 rejection or failure to file a declaration of candidacy, the **governor may submit the**
 10 **names of two persons qualified for the judicial office, and the** council, **after**
 11 **receiving the names submitted by the governor,** may meet at any time within the
 12 90-day period immediately preceding the effective date of the vacancy **to review the**
 13 **qualifications of the persons proposed by the governor, provide**
 14 **recommendations to the governor concerning the qualifications of those persons**
 15 **for appointment to the judicial office,** and submit to the governor the names of **four**
 16 **additional** [TWO OR MORE] persons qualified for the judicial office.

17 * **Sec. 5.** AS 22.15.205 is amended to read:

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

27 * **Sec. 6.** AS 22.20 is amended by adding a new section to article 4 to read:

28 **Sec. 22.20.230. Judicial report.** The judicial council shall prepare an annual
 29 report summarizing the questions asked of the supreme court, court of appeals,
 30 superior court, and district court candidates as part of the nomination and review
 31 process under AS 22.05.080(b), AS 22.07.070(b), AS 22.10.100(b), and

1 AS 22.15.170(e), and the answers of the candidates to those questions. Not later than
2 February 14 of each year, the judicial council shall submit the report to the senate
3 secretary and the chief clerk of the house of representatives and notify the legislature
4 that the report is available.

5 * **Sec. 7.** AS 22.30.011(a) is amended to read:

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

8 (1) has been convicted of a crime punishable as a felony under state or
9 federal law or convicted of a crime that involves moral turpitude under state or federal
10 law;

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

13 (3) within a period of not more than six years before the filing of the
14 complaint or before the beginning of the commission's inquiry based on its own
15 motion, committed an act or acts that constitute

16 (A) wilful misconduct in office;

17 (B) wilful and persistent failure to perform **the** [JUDICIAL]
18 duties **of the judge or magistrate;**

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

20 (D) conduct that brings the judicial office **or magistrate's**
21 **office** into disrepute; or

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

23 (4) is habitually intemperate.

24 * **Sec. 8.** AS 22.30.011(b) is amended to read:

25 (b) After preliminary informal consideration of an allegation, the commission
26 may exonerate the judge **or magistrate,** informally and privately admonish the judge
27 **or magistrate,** or recommend counseling. Upon a finding of probable cause, the
28 commission shall hold a formal hearing on the allegation. A hearing under this
29 subsection is public. Proceedings and records pertaining to proceedings that occur
30 before the commission holds a public hearing on an allegation are confidential, subject
31 to the provisions of AS 22.30.060(b).

1 * **Sec. 9.** AS 22.30.011(c) is amended to read:

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

4 * **Sec. 10.** AS 22.30.011(d) is amended to read:

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

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

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

10 * **Sec. 11.** AS 22.30.011(g) is amended to read:

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

14 * **Sec. 12.** AS 22.30.070 is amended to read:

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

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

21 (2) a recommendation to the supreme court by the commission for the
22 removal or retirement of the judge or magistrate.

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

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

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

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

20 * **Sec. 13.** AS 22.35 is amended by adding a new section to read:

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

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