

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 14, 2014

1:46 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Lesil McGuire, Vice Chair
Senator Donald Olson

MEMBERS ABSENT

Senator Fred Dyson
Senator Bill Wielechowski

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 21

Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council and relating to the initial terms of new members appointed to the judicial council.

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SJR 21

SHORT TITLE: CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL

SPONSOR(S): SENATOR(S) KELLY

02/10/14	(S)	READ THE FIRST TIME - REFERRALS
02/10/14	(S)	JUD
02/14/14	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SENATOR PETE KELLY
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SJR 21.

DAVID PARKER, representing himself
Wasilla, Alaska

POSITION STATEMENT: Agreed with the suggested amendment to SJR 21.

WILLIAM F. CLARK, representing himself
Chugiak, Alaska

POSITION STATEMENT: Offered suggestions to amend SJR 21.

BOB GROSECLOSE, representing himself
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to SJR 21.

ACTION NARRATIVE

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CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:46 p.m. Present at the call to order were Senators Olson, McGuire, and Chair Coghill.

SJR 21-CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL

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CHAIR COGHILL announced the consideration of SJR 21. "Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council and relating to the initial terms of new members appointed to the judicial council."

SENATOR PETE KELLY, Alaska State Legislature, sponsor of SJR 21, introduced the bill speaking to the following sponsor statement: [Original punctuation provided.]

Senate Joint Resolution 21 would place a constitutional amendment on the next general election ballot that would allow the voters to decide whether the membership of the Alaska judicial council should be expanded to include 10 public members and 5 attorney members.

Expanding the council to 10 public members and 5 attorney members with the Chief Justice serving at the 16" and ex-officio member would have Alaska follow a model used in several other states where a majority of the nominating committee consists of public "non-attorney" members. SJR 21 would increase the public's voice on the judicial council through the addition of more members who are selected by democratically accountable officials, i.e., the Governor and the Legislature. In contrast, the attorney members are

selected by the Board of Governors of the Bar Association, and are not subject to legislative confirmation, as they would be in many other states.

More importantly, this model would expand the number of highly qualified Alaskans who are involved in vetting an ever-growing number of judicial applicants for a court system that is much larger than at the time of statehood. This split retains solid representation by Alaska Bar Association members while ensuring the public voice in this process is strengthened along with regional diversity. According to the Alaska Constitution, the Governor and the ABA are tasked with making appointments to the council based on regional diversity. Three public members and three attorneys cannot begin to offer adequate diversity for a state with as many regional interests and vast differences as Alaska. Offering 7 more public members and 2 more attorney members will allow for a more diverse body, and the ability to allocate representation to more than just traditional urban centers.

SJR 21 will also reduce the likelihood of tie votes occurring and requiring the chief justice to vote since it will move the council from 6 to 15 regular voting members. The judicial council bylaws state that the Chief Justice "shall only vote when to do so could change the result." These changes will greatly lower the likelihood of the Chief Justice voting since there will be an odd number of regular voting members. The Chief Justice will also be protected from the appearance of a conflict of interest with a reduced likelihood of tie votes.

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SENATOR KELLY reviewed the names and locations of the attorney members over the history of the judicial council and commented that it reads like an urban Alaskan telephone book. He requested an at ease clarify when an attorney member from rural Alaska last served on the judicial council.

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At ease

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CHAIR COGHILL reconvened the meeting.

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SENATOR KELLY reported that in the history of the judicial council there have been no attorney members appointed from rural Alaska. Fairbanks has had 14 attorney members, Anchorage 12, Juneau 10, and Ketchikan 3. He identified the locations of the public members: Anchorage has had 10; Fairbanks 8; Ketchikan 6; Juneau 5; Homer, Sitka, Wasilla, and Seward have each had 2 public members; and Kotzebue, Barrow, Petersburg, and Kenai have each had 1. The Alaska Constitution says there shall be regional diversity but the data shows a different story, he said.

He highlighted that in the past two years there have been four instances in which the votes of attorney members and public members were tied when the council was selecting the names of judicial applicants to forward to the governor. Each time the chief justice cast the deciding vote in support of the attorney members, and against the public members. He offered his belief that this occurred because the deciding vote was cast by another member of the state bar. Another flaw with the current system is that it puts the chief justice in the position of a potential conflict of interest when casting a tie-breaking vote. The chief justice can vote with his/her state bar colleague and/or select applicants who think the way he/she thinks. This potential to mold the supreme court puts the chief justice in an incredible position of power, he said.

SENATOR KELLY qualified that he believes that the chief justice should be part of the process and SJR 21 does not envision removing the chief justice as the tie breaker. What the legislation does is suggest a larger number of public members, all of whom have to go through the confirmation process. This will reduce the possibility of a tie, and when there is a tie it will never be that a member of the ABA can dictate along with the other ABA members which name gets forwarded to the governor.

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SENATOR MCGUIRE said she supports the bill and the judicial council, and believes it's always appropriate to reflect on the way that it works. It should not be viewed as an attack. She said the sponsor's points are valid although Justice Carpeneti never sided with the attorney members when he was casting a tie-breaking vote; he respected the public choice. Nevertheless, the public is frustrated so it's time to change the system, she said.

She highlighted the costs and complications of increasing the judicial council membership to sixteen, and suggested the sponsor consider an amendment to maintain the number of attorney members at three, and increase the number of public members to five or six. This would give the governor more power to shape the judiciary.

SENATOR KELLY replied the bill seeks to recognize the diversity in the state and to keep the chief justice from being in a position of potential conflict of interest. He said the proposed amendment accomplishes that in a simpler fashion and he would not object. He noted that the resolution follows the Arizona model.

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CHAIR COGHILL said he'd like to divide the question to first consider the principle of having more people and then discuss the way it would work under different scenarios.

SENATOR KELLY restated his support for Senator McGuire's idea. He reasoned that the number of lawyer members should be fairly small in relation to the public members if they don't go through the confirmation process. He said the public members will be confirmed by people who are elected by the people, and that makes sense.

He acknowledged that, historically, tie votes are very rare and that it's even rarer that the chief justice would side with the attorney members rather than the public members. However, something has changed in recent years and it's a cause for action, he said.

CHAIR COGHILL asked if he's considered that adding more public members might add to the political debate, because the governor would have more influence. He also asked about the possibility of politics creeping into attorney appointments.

SENATOR KELLY said he keys on the fact that the people are frustrated; there is very little accountability with this group and the public isn't getting the desired results. He questioned what comes next if the legislature doesn't respond to the will of the people, and posited that it could be the election of judges.

CHAIR COGHILL commented that if the governor is appointing it is thought to be political, but his belief is that attorneys have their own political undertow.

SENATOR MCGUIRE commented that politics is a reflection of philosophy and values; and the governor - who is elected by the people - moves forward with a reflection of that philosophical choice. She continued to say that the attorneys that serve on the judicial council hopefully are selected based on competence and fairness in executing judgment, but they're not devoid of having a viewpoint.

She agreed with the sponsor that the attorney members' viewpoint should be more advisory, and the public members would carry out the will of the people.

CHAIR COGHILL observed that "Right now we're counting on public members to look into a system that really is mysterious to people in Alaska because it's not as open." He asked the sponsor if he'd looked into that.

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SENATOR KELLY answered no, but he has opinions.

CHAIR COGHILL offered his belief that having the process out in the open is better, but that there are reasons that it isn't because reputations need to be protected.

SENATOR KELLY said he isn't looking for the judicial council proceedings to be more out in the open, but he doesn't see a downside to having more members going through the public confirmation process.

CHAIR COGHILL shared that he found it disturbing during a committee when a barred lawyer was questioning a public member in a very pejorative way. This was a disservice to everyone, and candidates withdrew their names when they saw their political stances and philosophy would be openly questioned, he said.

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SENATOR OLSON asked when a constitutional amendment was last successful.

SENATOR KELLY replied it was in 2004.

SENATOR OLSON asked to be reminded of the two objectives of the legislation.

SENATOR KELLY replied the first is regional diversity, which is almost impossible to achieve with so few members. The second

objective is to keep from putting the chief justice in a position of potential conflict of interest when he/she casts a tie-breaking vote. This situation has the appearance of being realized when the chief sides against the people of Alaska and votes with the attorney members.

SENATOR OLSON asked who he suggests should break the tie.

SENATOR KELLY explained that the problem is solved by increasing the number of public members relative to attorney members. If there's a tie, both sides will include public members so the chief justice couldn't be in the position of siding with the attorney members.

SENATOR OLSON commented on the cost associated with doubling the number of members on the judicial council, and questioned how the sponsor could justify this when the state is already in deficit spending.

SENATOR KELLY replied Senator McGuire has the solution; increase just the number of public members. He said he prefers her suggestion to the original proposal.

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SENATOR OLSON asked how to ensure that the public members will be qualified to select judicial applicants, some of whom could sit on the supreme court.

SENATOR KELLY responded that the attorney members will still be part of the process and have a lot of influence because of their education and experience, but their role will be more advisory.

CHAIR COGHILL added that both groups will be scrutinized; attorneys will be reviewed by the state bar and public members will go through the legislative confirmation process.

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CHAIR COGHILL opened public testimony.

SENATOR MCGUIRE discussed the rigorous vetting process a nominee goes through to become a public member of the judicial council and emphasized that it isn't just anybody who would qualify.

SENATOR OLSON asked when the last time was that a public member wasn't confirmed.

SENATOR KELLY offered to follow up with the answer.

SENATOR OLSON reiterated his view that a judicial council with 16 members is too large.

SENATOR KELLY agreed.

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DAVID PARKER, representing himself, Wasilla, Alaska, said he is a retired Anchorage police officer who began serving as a public member of the judicial council in March. He said he is speaking in support of the concept of SJR 21, but not the size as originally envisioned. Rather, he prefers the suggestion Senator McGuire put forth to increase the number of public members.

He opined that the heart of the issue is that the public's perception of the judicial council is that the fox is in charge of the henhouse. He voiced support for increasing the non-attorney membership by two individuals, and moving to a simple majority vote. Right now there has to be four positive votes before a name can be forwarded to the governor, and that can be difficult. This would also eliminate a lot of the tie votes that have to be broken by the chief justice.

MR. PARKER also suggested the committee consider removing the constitutional prohibition against appointing a public defender or prosecutor to the judicial council, because these people could bring some very cogent and excellent input into the process, he said.

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CHAIR COGHILL thanked Mr. Parker for his service.

SENATOR OLSON asked if he would support the idea of keeping the total council membership to a minimum by simply decreasing the current number of attorney members.

MR. PARKER said he believes that having three attorneys brings diversity of input and the public members appreciate what the attorneys bring to the discussion. Increasing the public members by two wouldn't create much more expense, but would provide better diversity.

SENATOR OLSON commented that it's unusual that a judicial member would voice an opinion on legislation that is going through the process. He asked Mr. Parker if his supposition was wrong.

MR. PARKER replied he is a citizen of the state of Alaska voicing a concern he's had for many years. He reiterated that the judicial council needs to reflect the public view better than it currently does, and adding public members would be an improvement.

SENATOR OLSON asked if the judicial council has an opinion on the matter.

MR. PARKER replied the council is planning to meet and discuss the legislation in the near future. He reiterated that he is speaking today as a member of the public.

CHAIR COGHILL added that the court will likely have a position on the legislation.

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SENATOR MCGUIRE thanked Mr. Parker for his service both as a police officer and judicial council member, and for having the courage to express his First Amendment rights as a citizen.

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WILLIAM F. CLARK, representing himself, Chugiak, Alaska, said he has lived in Alaska for 35 years and has retired twice, first as a pilot in the Air Force and second as an engineer. He finished his service as a public member of the judicial council one year ago and is testifying from that perspective.

He suggested the committee increase the public members on the judicial council to seven and maintain three attorney members. If there is a desire to eliminate the potential for a tie vote, then increase the public members to eight. He said he selected these numbers because he views the attorneys as very valuable professional advisors and believes that the public members have to reflect the public population.

MR. CLARK opined that a 10 or 11 member council, three of which are attorneys, provides good regional representation while maintaining the opportunity for the needed technical and professional input. He concluded that the council shouldn't be mysterious to the public and the public should be better represented both regionally and numerically. The focus should be on the governor; he/she should be given the greatest, broadest choice of qualified applicants.

CHAIR COGHILL thanked Mr. Clark.

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BOB GROSECLOSE, representing himself, Fairbanks, Alaska said he served on the judicial council from 2000-2006 as an attorney member. He described the way that Alaska selects its judges as a model for the rest of the country. It's a process that has worked well, and any amendment should be carefully considered. Expanding the council to 16 members will encounter efficiency issues related to travel and schedule alignment, he said.

He related that when he was serving on the council, he didn't view his role as serving the lawyers in the state. His mission was to screen the most qualified candidates to ensure that the governor was able to select judges from the best that the candidate pool had to offer. With regard to the comments about rancor between attorney and public members on the council, he said that wasn't his experience. He urged the committee to be truly convinced that a change is necessary before going forward with the proposal.

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CHAIR COGHILL asked his perspective of how the survey works for attorney members.

MR. GROSECLOSE explained that lawyers are invited to rate candidates based on temperament, knowledge of the law, honesty, fairness, and ability to serve in an impartial role. The scoring options are deficient, acceptable, good and excellent. Each lawyer filling out the survey identifies their location, years in practice, whether they focus on civil or criminal, law and whether they're with a large office or on their own. There is also the option of adding comments. The lawyer can identify him/herself by name or choose to be anonymous. Debate at the council level was how much credence should be given to anonymous input, how much weight should be given to the bar poll, and is the bar poll a meaningful tool. He opined that it's a tool that is worth keeping.

CHAIR COGHILL thanked Mr. Groseclose. [SJR 21 was held in committee.]

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There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:01 p.m.