

SENATE BILL NO. 200

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY SENATOR SHOWER

Introduced: 2/19/20

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

1 for 10 years?";

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

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

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

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

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

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

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

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

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

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

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

30 **Sec. 15.35.120. Requirement of filing fee for district court or magistrate**
31 **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 **Commission on Judicial Conduct** [JUDICIAL COUNCIL] shall file with the
21 lieutenant governor a statement including information about each supreme court
22 justice, court of appeals judge, superior court judge, [AND] district court judge, **and**
23 **magistrate** who will be subject to a retention election. The statement shall reflect the
24 evaluation of each justice, [OR] judge, or magistrate conducted by the **Commission**
25 **on Judicial Conduct** [JUDICIAL COUNCIL] according to law and shall contain a
26 brief statement describing each public reprimand, public censure, or suspension
27 received by the judge or magistrate under AS 22.30.011(d) during the period covered
28 in the evaluation. A statement may not exceed 600 words.

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

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

(1) President or Vice-President of the United States, United States senator, United States representative, governor, lieutenant governor, supreme court justice, and court of appeals judge, \$300 each;

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

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

* **Sec. 9.** AS 15.58.060(c) is amended to read:

(c) There is no charge for statements and recommendations submitted by the Commission on Judicial Conduct [JUDICIAL COUNCIL] or for statements advocating approval or rejection of a proposition submitted to the voters for approval.

* **Sec. 10.** AS 22.05.100 is amended to read:

Sec. 22.05.100. Approval or rejection. Each supreme court justice is subject to approval or rejection as provided in AS 15 (Alaska Election Code). The Commission on Judicial Conduct [JUDICIAL COUNCIL] shall conduct an evaluation of each justice before the retention election and shall provide to the public information about that justice and may provide a recommendation regarding retention or rejection. The information and any recommendation shall be made public at least 60 days before the retention election. The Commission on Judicial Conduct [JUDICIAL COUNCIL] shall also provide the information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.58.050. If a majority of those voting on the question rejects the candidacy, the rejected justice may not be appointed to fill any vacancy in the supreme court, court of appeals, superior court, or district courts of the state for a period of four years thereafter.

* **Sec. 11.** AS 22.07.060 is amended to read:

Sec. 22.07.060. Approval or rejection. Each judge of the court of appeals is subject to approval or rejection as provided in AS 15 (Alaska Election Code). The Commission on Judicial Conduct [JUDICIAL COUNCIL] shall conduct an evaluation of each judge before the retention election and shall provide information to the public about the judge and may provide a recommendation regarding retention or rejection. The information and any recommendation shall be made public at least 60

1 days before the election. The **Commission on Judicial Conduct** [JUDICIAL
 2 COUNCIL] shall also provide the information and any recommendation to the office
 3 of the lieutenant governor in time for publication in the election pamphlet as required
 4 by AS 15.58.050. If a majority of those voting on the question rejects the candidacy of
 5 a judge, the rejected judge may not for a period of four years thereafter be appointed to
 6 fill a vacancy in the supreme court, the court of appeals, the superior court, [OR] the
 7 district court, **or a magistrate position** of the state.

8 * **Sec. 12.** AS 22.07.070 is amended to read:

9 **Sec. 22.07.070. Vacancies.** (a) The governor shall fill a vacancy or appoint a
 10 successor to fill an impending vacancy in the office of judge of the court of appeals
 11 within 45 days after receiving nominations from the judicial council [,] by appointing,
 12 **for each actual or impending vacancy, one person who was** [OF TWO OR MORE
 13 PERSONS] nominated by the council **or one person who was not nominated but is**
 14 **qualified under AS 22.07.040. An appointment made under this section is subject**
 15 **to confirmation by a majority of the members of the legislature in joint session**
 16 [FOR EACH ACTUAL OR IMPENDING VACANCY]. An appointment to fill an
 17 impending vacancy becomes effective upon **the later of either confirmation by the**
 18 **legislature or** the actual occurrence of the vacancy.

19 (b) The office of a judge of the court of appeals becomes vacant 90 days after
 20 the election at which the judge is rejected by a majority of those voting on the question
 21 or for which the judge fails to file a declaration of candidacy. Upon the occurrence of
 22 (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the
 23 election following failure of a judge to file a declaration of candidacy, the judicial
 24 council shall meet within 90 days and submit to the governor the names of two or
 25 more persons qualified for the judicial office; however, the 90-day period may be
 26 extended by the judicial council with the concurrence of the supreme court. In the
 27 event of an impending vacancy other than by reason of rejection or failure to file a
 28 declaration of candidacy, the judicial council may meet at any time within the 90-day
 29 period immediately preceding the effective date of the vacancy and submit to the
 30 governor the names of two or more persons qualified for the judicial office. **The**
 31 **judicial council may submit to the governor the name of a candidate for judicial**

office only if the judicial council determines that the judicial candidate understands and is committed to strict constitutional interpretation of statutes and regulations and adhering to legislative intent.

* Sec. 13. AS 22.10.150 is amended to read:

Sec. 22.10.150. Approval or rejection. Each superior court judge is subject to approval or rejection as provided in AS 15 (Alaska Election Code). The **Commission on Judicial Conduct** [JUDICIAL COUNCIL] shall conduct an evaluation of each judge before the retention election and shall provide to the public information about the judge and may provide a recommendation regarding retention or rejection. The information and any recommendation shall be made public at least 60 days before the retention election. The information shall include the judge's consideration of victims when imposing sentence on persons convicted of felony offenses where the offenses involve victims. The **Commission on Judicial Conduct** [JUDICIAL COUNCIL] shall also provide the information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.58.050. If a majority of those voting on the question rejects the candidacy of a judge, the rejected judge may not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, superior court, or district courts of the state.

* Sec. 14. AS 22.15.170(a) is amended to read:

(a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in an office of district judge **or magistrate** within 45 days after receiving nominations from the judicial council by appointing, **for each actual or impending vacancy,** one **person who was** [OF TWO OR MORE PERSONS] nominated by the council **or one person who was not nominated but is qualified under AS 22.15.160. An appointment made under this section is subject to confirmation by a majority of the members of the legislature in joint session. An** [FOR EACH ACTUAL OR IMPENDING VACANCY. THE] appointment to fill an impending vacancy becomes effective upon **the later of either confirmation by the legislature or** the actual occurrence of the vacancy.

* Sec. 15. AS 22.15.170(e) is amended to read:

(e) The office of a district court judge or magistrate becomes vacant 90 days after the election at which the judge or magistrate is rejected by a majority of those voting on the question or for which the judge or magistrate fails to file a declaration of candidacy. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the election following failure of a judge or magistrate to file a declaration of candidacy, the judicial council shall meet within 90 days and submit to the governor the names of two or more persons qualified for the judicial office or magistrate position; except that this 90-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office or magistrate position. The judicial council may submit to the governor the name of a candidate for judicial office or for a magistrate position only if the judicial council determines that the judicial or magistrate candidate understands and is committed to strict constitutional interpretation of statutes and regulations and adhering to legislative intent.

* Sec. 16. AS 22.15.195 is amended to read:

Sec. 22.15.195. Approval or rejection. Each district court judge and magistrate is subject to approval or rejection as provided in AS 15 (Alaska Election Code). The Commission on Judicial Conduct [JUDICIAL COUNCIL] shall conduct an evaluation of each judge or magistrate before the retention election and shall provide to the public information about the judge or magistrate and may provide a recommendation regarding retention or rejection. The information and the recommendation shall be made public at least 60 days before the election. The Commission on Judicial Conduct [JUDICIAL COUNCIL] shall also provide the information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.58.050. If a majority of those voting on the question rejects the candidacy of a judge or magistrate, the rejected judge or magistrate may not for a period of four years thereafter be appointed to fill

any vacancy in the supreme court, court of appeals, superior court, or district courts of the state, or in a magistrate position.

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

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

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

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

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

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

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

(A) wilful misconduct in office;

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

(C) conduct prejudicial to the administration of justice;

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

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

(4) is habitually intemperate.

1 * **Sec. 19.** AS 22.30.011(b) is amended to read:

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

9 * **Sec. 20.** AS 22.30.011(c) is amended to read:

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

12 * **Sec. 21.** AS 22.30.011(d) is amended to read:

13 (d) The commission shall, after a hearing held under (b) of this section,
14 (1) exonerate the judge or magistrate of the charges; or
15 (2) refer the matter to the supreme court with a recommendation that
16 the judge or magistrate be reprimanded, suspended, removed [,] or retired from
17 office, or publicly or privately censured by the supreme court.

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

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

22 * **Sec. 23.** AS 22.30.070 is amended to read:

23 **Sec. 22.30.070. Disqualification, suspension, removal, retirement, and**
24 **censure of judges and magistrates.** (a) A judge or magistrate is disqualified from
25 acting as a judge or magistrate, without loss of salary, while there is pending
26 (1) an indictment or an information charging the judge or magistrate
27 in the United States with a crime punishable as a felony under state [ALASKA] or
28 federal law; [,] or
29 (2) a recommendation to the supreme court by the commission for the
30 removal or retirement of the judge or magistrate.
31 (b) On recommendation of the commission, the supreme court may reprimand,

publicly or privately censure, or suspend a judge or magistrate from office without salary when in the United States the judge or magistrate pleads guilty or no contest or is found guilty of a crime punishable as a felony under state or federal law or of a crime that involves moral turpitude under state or federal law. If the conviction is reversed, suspension terminates, and the judge or magistrate shall be paid the judge's or magistrate's salary for the period of suspension. If the judge or magistrate is suspended and the conviction becomes final, the supreme court shall remove the judge or magistrate from office.

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

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

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

* **Sec. 24.** AS 22.35 is amended by adding a new section to read:

Sec. 22.35.035. Prohibited use of state funds. (a) State funds may not be used to support or oppose the retention or rejection of a judicial officer in an election under AS 15 (Alaska Election Code). In this subsection, "judicial officer" means a supreme

1 court justice, including the chief justice, a judge of the court of appeals, a judge of the
2 superior court, a district court judge, or a magistrate.

3 (b) This section does not apply to the duties of the Commission on Judicial
4 Conduct under AS 15.58.050, AS 22.05.100, AS 22.07.060, AS 22.10.150, and
5 AS 22.15.195.

6 * **Sec. 25.** AS 22.15.170(c), 22.15.170(d); and AS 22.30.011(h) are repealed.