

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 22, 2021

1:33 p.m.

MEMBERS PRESENT

Senator Lora Reinbold, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 14

"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."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 14

SHORT TITLE: SELECTION AND REVIEW OF JUDGES

SPONSOR(S): SENATOR(S) SHOWER

01/22/21	(S)	PREFILE RELEASED 1/8/21
01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	JUD
02/03/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/03/21	(S)	Heard & Held
02/03/21	(S)	MINUTE(JUD)
02/05/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/05/21	(S)	Scheduled but Not Heard
02/10/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/10/21	(S)	Heard & Held
02/10/21	(S)	MINUTE(JUD)

02/12/21 (S) JUD AT 1:30 PM BUTROVICH 205
02/12/21 (S) Heard & Held
02/12/21 (S) MINUTE(JUD)
02/15/21 (S) JUD AT 1:30 PM BUTROVICH 205
02/15/21 (S) Heard & Held
02/15/21 (S) MINUTE(JUD)
02/17/21 (S) JUD AT 1:30 PM BUTROVICH 205
02/17/21 (S) Heard & Held
02/17/21 (S) MINUTE(JUD)
02/22/21 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

SCOTT OGAN, Staff
Senator Mike Shower
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented Amendment 4 to SB 14 on behalf of the sponsor.

SANDON FISHER, Attorney
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of SB 14.

ACTION NARRATIVE

[1:33:11 PM](#)

CHAIR LORA REINBOLD called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Myers, Kiehl, Hughes, Shower, and Chair Reinbold.

SB 14-SELECTION AND REVIEW OF JUDGES

[1:34:47 PM](#)

CHAIR REINBOLD announced that the business would be SENATE BILL NO. 14, "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."

[1:35:28 PM](#)

SENATOR SHOWER referred to a flowchart describing the current selection process. He related that two or more attorneys are referred to the Judicial Council, the council screens the names and refers two or more nominees to the governor for final selection. The governor must select one name and the remaining names of nominees are returned to the attorney pool, he said.

SENATOR SHOWER reviewed a similar flowchart that described the process that would be taken under Amendment 4 [not yet under consideration by the committee]. He stated that the Judicial Council would refer four names and the governor would refer two names. The Judicial Council would screen all six prospective candidates and forward up to six names to the Governor. If the governor decided not to select a judicial nominee, the process would start over. If the governor selects a nominee, the name would be forwarded to the legislature for confirmation. If the legislature did not confirm the nominee, the process would start over, but once confirmed, the nominee would become a judge, he said.

SENATOR SHOWER referred to a handout that described the process for selection of federal judges, which he characterized as the Missouri plan. He reviewed the process, stating that recommendations are made to the President, and if accepted, the candidates' names are forwarded to the US Senate Judiciary Committee. The committee holds a hearing to interview the candidate, and if the nominee is rejected, the candidate's name is returned to the President. The President may then nominate another candidate. If the second candidate is accepted, the name is forwarded to the Senate for consideration during confirmation. If confirmed, the person becomes a federal judge and if not, the person does not become a judge.

[1:38:43 PM](#)

CHAIR REINBOLD asked him to post handouts to BASIS.

SENATOR SHOWER agreed to do so.

[1:39:40 PM](#)

SENATOR SHOWER reviewed how several other states would select their judges. He explained that California uses two systems: appellate judges are selected by gubernatorial appointment followed by commission confirmation; and trial judges are elected through a nonpartisan election. Florida appellate judges are selected using the Missouri plan, but trial judges are

selected in nonpartisan elections. Oregon judges are selected in nonpartisan elections, he said.

SENATOR SHOWER described the "assisted appointment" method of judicial selection, sometimes referred to as "merit selection" or the Missouri Plan. This process is modeled after the method used to select federal judges, he said. Using this process, the governor would appoint state judges with help from a commission or board.

SENATOR SHOWER reported that six states use partisan elections, including Alabama, Illinois, Louisiana, North Carolina, Pennsylvania, and Texas. Five states use gubernatorial or legislative appointments, including California, New Jersey, Tennessee, South Carolina, and Virginia. Fifteen states use the assisted appointment or Missouri plan.

SENATOR SHOWER said that politics is present in all judicial systems. He referenced quotes from a study to support this. He emphasized that the political affiliation of the Alaska Bar Association politicizes the process, regardless of whether it is an elected system or a non-elected merit based system. He said that three attorney members of the Alaska Judicial Council are selected by the [Board of Governors] of the Alaska Bar Association. He argued for a merit-based system to give voters a more direct voice in determining which judges will serve in the court. He added that the judicial council meetings are not entirely open to the public, so improved transparency was needed.

[1:44:09 PM](#)

SENATOR SHOWER said he compiled quotes from professors in support of the merit system or Missouri plan for selecting judges [authors unknown] [Original punctuation provided]:

It is hard to believe that lawyers who select judges in merit systems care less about the decisional propensities of judicial candidates than do voters or elected officials.

As the bar is an elite segment of society, states that give lawyers more power than their fellow citizens are rightly described as elitist. Democratic principles are violated, however, when members of the commission are selected by a minority of persons, i.e., lawyers and their area. This of course is the core of the Missouri Plan, the merit based system. Allowing the

bar to select some of commission and then declining to offset that bar power with confirmation by the Senate or other popular elected body, and it is this core that deprives the Missouri Plan of democratic legitimacy.

As the term implies, merit selection is thought by its supporters to result in more qualified and otherwise better judges than electoral selection. There is just one hitch to this. There is virtually no empirical support for this claim. There is a large body of social science research on state supreme courts and it shows there is no real observable difference between the judges chosen in merit selection states and those chosen in other states. Judges from state A tend to look and act almost the same as judges from states B through Z, regardless of how they are selected or retained. In other words, given states choice between merit selection and partisan election does not seem to have any discernable effect on the kind of people chosen for the bench or their performance on it.

SENATOR SHOWER summarized what [the late] Louisiana Supreme Court Justice Calogero stated in his final State of the Judiciary comments. He related that the justice said that in his experience the electorate, for the most part, has made wise and deliberate choices for those who are elected to serve in state judiciary. He said the justice was also concerned that replacing an elective system with a selective or appointive only system would remove the choice from the people and would place it in the hands of a few. This process does not in any way remove the politics from the process as some have argued, he said.

[1:46:06 PM](#)

SENATOR SHOWER stated that SB 14 would assert the legislature's constitutional authority to fill the lower courts. He said it would not upend how Alaska judges are selected as reported by the Alaska Daily News. The Alaska Constitution outlines the selection process for the Alaska Supreme Court justices and Superior Court judges. SB 14 would not affect that process. He reported that Professor Brian Fitzpatrick, Vanderbilt University, claimed that the Missouri plan has resulted in the nomination of more left-leaning judges. He cited campaign contributions made to support this view. He noted that judges were rarely voted out during elections. According to one 1998 study, only 58 percent of voters knew that judicial performance

evaluations were available. He maintained his position that the judicial process is politicized.

[1:48:56 PM](#)

CHAIR REINBOLD said his comments provided clarity to this issue for her. She asked him to provide his reference materials to the committee.

[1:49:44 PM](#)

SENATOR KIEHL asked for the sponsor's sources of quotes and studies he referenced. He argued that the legislature should not change its system if it does not matter what process is used to select judges since the results were about the same.

SENATOR SHOWER remarked that the court system opposed SB 14. The court system testified that the proposed system would politicize the system. However, he found that many other states successfully used the merit system, also known as the Missouri Plan. He maintained his view that the current system is not the best approach. First, the [Board of Governors of] the Alaska Bar Association appoint [three] members to the Judicial Council. The Judicial Council members are not elected or confirmed by the legislature. Second, the Judicial Council screens and nominates judicial applicants and forwards their names to the governor. Finally, the governor must select from the Judicial Council's nominees.

SENATOR SHOWER said he would like more accountability in the system. He offered his view that Alaska could do a better job. He filed the bill to provide better transparency, give additional voice to the people and remove control of one branch of government vis-à-vis the Alaska Bar Association and Judicial Council. Under the current system, judges are not held accountable to the people until a retention vote is held, he said. One prior testifier suggested that using state funds for an unelected body to provide information to the voter might be unconstitutional, he said.

[1:54:02 PM](#)

SENATOR KIEHL said the sponsor referenced that people tend not to vote against retaining judges, yet many voters are unaware of judicial evaluations. He suggested this creates tension.

[1:55:07 PM](#)

CHAIR REINBOLD advised members that Amendment 1 was rolled to bottom of the amendments, that Amendment 2 was adopted, that

Amendment 3 was withdrawn, and the committee is currently on Amendment 4.

[1:56:26 PM](#)

SENATOR SHOWER moved to adopt Amendment 4 [work order 32-LS0171\A.8.]:

32-LS0171\A.8
Fisher
2/16/21

AMENDMENT 4

OFFERED IN THE SENATE

BY SENATOR SHOWER

Page 5, line 8, through page 6, line 3:

Delete all material and insert:

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

Sec. 22.07.070. Vacancies. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of judge of the court of appeals [WITHIN 45 DAYS] after receiving nominations and recommendations from the judicial council on the person or persons submitted to the judicial council for review under (b) of this section, by appointing, for each actual or impending vacancy, one person who was [OF TWO OR MORE PERSONS] nominated by the council or who was reviewed by the council under (b) of this section at the request of the governor and who is qualified under AS 22.07.040. If the governor does not appoint a person from the first round of persons nominated or reviewed by the judicial council under (b) of this section, the governor shall submit the names of not more than two additional persons to the judicial council for review under (b) of this section and the judicial council may submit to the governor the names of not more than four additional persons under (b) of this section. An appointment made under this section is subject to confirmation by a majority of the members of the legislature in joint session [FOR EACH ACTUAL OR IMPENDING VACANCY]. An appointment to fill an impending vacancy becomes effective upon the later of either confirmation by the legislature or the actual occurrence of the vacancy.

(b) The office of a judge of the court of appeals becomes vacant 90 days after the election at which the judge is rejected by a majority of those voting on the question or for which the judge 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 to file a declaration of candidacy; or (4) the decision of the governor not to appoint a person under (a) of this section, the governor shall, within 90 days, submit to the judicial council the names of not more than two persons qualified for the judicial office. The [, THE] judicial council shall meet within 90 days after receiving the names submitted by the governor to review the qualifications of the person or persons proposed by the governor, provide recommendations to the governor concerning the qualifications of those persons for appointment to the judicial office, and submit to the governor the names of up to four additional [TWO OR MORE] persons qualified for the judicial office; however, the 90-day period for the council to meet may be extended by the judicial 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 governor may submit to the judicial council the names of not more than two persons qualified for the judicial office, and the judicial council, after receiving names submitted by the governor, may meet at any time within the 90-day period immediately preceding the effective date of the vacancy to review the qualifications of the person or persons proposed by the governor, provide recommendations to the governor concerning the qualifications of those persons for appointment to the judicial office, and submit to the governor the names of up to four additional [TWO OR MORE] persons qualified for the judicial office. The 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."

Page 6, line 20, through page 7, line 18:

Delete all material and insert:

*** 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 and recommendations from the judicial council on the person or persons submitted to the judicial council for review under (e) of this section, by appointing, for each actual or impending vacancy, one person who was [OF TWO OR MORE PERSONS] nominated by the council or who was reviewed by the council under (e) of this section at the request of the governor and who is qualified under AS 22.07.040. If the governor does not appoint a person from the first round of persons nominated or reviewed by the judicial council under (e) of this section, the governor shall submit the names of not more than two additional persons to the judicial council for review under (e) of this section and the judicial council may submit to the governor the names of not more than four additional persons under (e) of this section. 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; or (4) the decision of the governor not to appoint a person under (a) of this section, the governor shall, within 90 days, submit to the judicial council the names of not more than two persons qualified for the judicial office or magistrate position. The [, THE] judicial council shall meet within 90 days after receiving the names submitted by the governor to review the qualifications of the person or persons proposed by the governor, provide

recommendations to the governor concerning the qualifications of those persons for appointment to the judicial office or magistrate position, and submit to the governor the names of up to four additional [TWO OR MORE] persons qualified for the judicial office or magistrate position; except that this 90-day period for the council to meet 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 governor may submit to the judicial council the names of not more than two persons qualified for the judicial office or magistrate position, and the council, after receiving names submitted by the governor, may meet at any time within the 90-day period immediately preceding the effective date of the vacancy to review the qualifications of the person or persons proposed by the governor, provide recommendations to the governor concerning the qualifications of those persons for appointment to the judicial office or magistrate position, and submit to the governor the names of up to four additional [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."

SENATOR REINBOLD objected for discussion purposes.

[1:56:50 PM](#)

SCOTT OGAN, Staff, Senator Mike Shower, Alaska State Legislature, Juneau, Alaska, on behalf of the sponsor, explained that Amendment 4 would create a hybrid judicial selection process. The Judicial Council would submit four names and the governor would submit two names. All six applicants would be screened by the Judicial Council and considered by the governor, he said. The governor could decide to reject his nominees based on the evaluations. The governor could also reject the Judicial Council nominees. If selected, the appointee would go before the legislature for confirmation, and if confirmed, the person would become a judge. He remarked that Amendment 4 was written, in part, to address Senator Hughes's concerns.

[1:59:49 PM](#)

SENATOR HUGHES said the flowcharts were helpful. She explained her goal was to deter or eliminate cronyism, in which the governor could submit someone whose background was unknown. The vetting by the Judicial Council would inform the governor and public on a judicial appointee's qualifications. She offered her view that allowing the governor to select two attorneys to consider for judgeships would improve the process.

[2:01:11 PM](#)

SENATOR KIEHL said it seemed odd that the governor would put forth names without first screening and vetting them. He recalled the vetting process used during his experience working for a prior governor.

SENATOR HUGHES said that this would provide consistency because the Judicial Council would use the same process to evaluate all judicial nominees. She acknowledged that the governor would vet applicants, but he/she may not cover the same things. She maintained her view that double vetting would be better.

[2:03:17 PM](#)

SENATOR KIEHL related his understanding that the Judicial Council could discover some ethical issue in its screening process and not recommend the governor's judicial applicant. He asked whether the governor could still appoint the person.

MR. OGAN agreed that was correct.

SENATOR HUGHES agreed the governor could still appoint the person. The bill would require the judicial applicant to go through the confirmation process.

[2:04:30 PM](#)

SENATOR SHOWER remarked that he sees the merits for the Judicial Council to screen judicial applicants. He pointed out that issues could arise with the Judicial Council's applicants.

[2:05:45 PM](#)

SENATOR KIEHL asked for further clarification on the total number of names that could be submitted to the governor. He related his understanding, after speaking to Legislative Lega, that four names would be forwarded to the governor.

MR. OGAN reread Amendment 4 and agreed that it would be a total of four names.

[2:07:22 PM](#)

SENATOR KIEHL asked when the process would end and the judgeship would occur.

SENATOR SHOWER related that he grappled with this question, but he discussed this with Legislative Legal and decided this has not occurred and is not likely to happen. He surmised that long battles with an endless loop in the judicial appointment process would not serve anyone.

[2:09:48 PM](#)

SENATOR KIEHL agreed that the Judicial Council and governor would not likely end up in an endless loop. He expressed concern that problems could arise during the legislative confirmation process, if so; it could leave a set of judgeships unfilled.

[2:10:31 PM](#)

SENATOR MYERS suggested the committee could look at two processes. He noted that federal judicial appointees would sometimes not be confirmed, but he was unsure that it had happened twice in a row for the same federal judgeship.

[2:12:07 PM](#)

SENATOR HUGHES highlighted that if it seemed as though a nominee was in trouble in the confirmation process, the governor would likely forward another name. She agreed that it would not probably be an endless loop.

CHAIR REINBOLD reminded members that the sponsor indicated his willingness to consider changes to Amendment 4.

[2:13:05 PM](#)

SENATOR KIEHL said he preferred using a 90-day window instead of 45 days since the short timeframe could be difficult to meet during the legislative session. He expressed concern that judgeships might be held open, given that it has occurred at the federal level.

MR. OGAN referred to an earlier question. He said the Legislative Legal attorney confirmed that six names would be submitted to the governor. The governor could submit two names for judicial nominees and the Judicial Council could submit up to four names for a total of six names.

[2:14:59 PM](#)

SENATOR HUGHES agreed that the language would allow the Judicial Council to submit up to four names, but the council might only

submit two names. She suggested that the flowchart could read four to six names.

[2:15:29 PM](#)

At ease

[2:21:51 PM](#)

CHAIR REINBOLD reconvened the meeting.

[2:22:18 PM](#)

SENATOR KIEHL asked for further clarification on how many names the Judicial Council could submit to the governor.

SANDON FISHER, Attorney, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, referred to the language on page 2 to AS 22.07.070(b). He referred to [Section 14] AS 22.15.170, which relates to applicants to the court of appeals, district court and magistrates. He explained that the governor would submit two names, the Judicial Council would review those names and make recommendations to the governor concerning the qualifications of those persons. The Judicial Council could submit up to four additional names to the governor for consideration for a total of six names.

[2:23:58 PM](#)

SENATOR SHOWER referred to the flowchart. He related his understanding that the governor could submit up to two names, and the Judicial Council could submit up to four names. Thus, it is possible the governor or the Judicial Council would submit fewer names than allowable.

[2:24:46 PM](#)

MR. FISHER agreed that up to six attorney names could be submitted for each vacant judicial position, with up to two names from the governor, reviewed by the Judicial Council. He said up to four additional names could be nominated by the Judicial Council.

[2:25:09 PM](#)

SENATOR KIEHL referred to language in AS 22.07.070(a) and AS 22.15.170 (a) and asked why the word "additional" is used in subsection (a) but not in subsection (b).

MR. FISHER answered that "additional" in subsection (a) refers to instances when the governor requires a second round of nominations if the governor does not select any of the six names.

SENATOR KIEHL acknowledged that he had missed the language "referred to". He said he agreed with Mr. Fisher.

[2:26:32 PM](#)

SENATOR HUGHES referred to page 1, line 13 of Amendment 4 reads "shall." She asked if the sponsor intended to require the governor to submit up to two additional names.

SENATOR SHOWER asked for clarification from the bill drafter.

[2:27:26 PM](#)

MR. FISHER answered that whether the governor is required to submit names is a policy call. He said that Amendment 4 would require the governor to submit two additional names to the Judicial Council in the event of a second round, after the governor rejected the initial round of applicants.

[2:28:20 PM](#)

SENATOR HUGHES asked the sponsor for his preference.

SENATOR SHOWER responded that he was agreeable to changing "shall" to "may" to give the governor more flexibility.

[2:29:54 PM](#)

SENATOR HUGHES referred to the language on page 1, line 13. She indicated she was leaning towards keeping the language as "shall" rather than changing it to "may." She highlighted that someone who represents the people would submit names of judicial applicants and she preferred to have the governor submitting names.

SENATOR KIEHL pointed out that zero is not more than two. He suggested that to ensure that the governor submits any names, it should read at least one and not more than two.

SENATOR SHOWER asked for clarification from Mr. Fisher.

[2:31:45 PM](#)

MR. FISHER agreed that zero is less than two. For example, under Amendment 4, if the governor decided not to select a person in the first round and initiated a second round, the governor would be required to submit the names of not more than two persons, which could be zero. The Judicial Council could submit to the governor the names of not more than four persons. However, during the second round of review the Judicial Council would not be required to submit any names.

MR. FISHER suggested that if the committee would like to require either party to submit names, he could help with drafting. He characterized it as a policy decision. He commented that the committee should make sure that if the governor decides not to submit anyone under the first round that something triggers an obligation in the second round for the parties to nominate persons.

[2:33:39 PM](#)

SENATOR SHOWER indicated he was inclined to leave it as it is. He said he found it difficult to believe that the Judicial Council or the governor would not fulfill their duties to recommend judicial applicants for consideration.

[2:35:00 PM](#)

SENATOR HUGHES asked if not more than two could be zero for the governor, the converse could apply for the Judicial Council, that not more than four could also mean zero.

MR. FISHER agreed that not more than two could be zero. The Judicial Council's option to nominate four names is optional throughout Amendment 4. He confirmed that Amendment 4 does not require that anyone be nominated in the second round.

SENATOR HUGHES concluded that means that the governor could be forced to go back to the first round to select judicial nominees. She agreed that the sponsor may wish to require a minimum for the second round.

[2:36:25 PM](#)

CHAIR REINBOLD solicited language for a Conceptual Amendment.

MR. FISHER responded that depending on the will of the committee, he would suggest considering language, "at least one but not more than two" for the governor's selection or "at least one but not more than four" for the Judicial Council's selection.

[2:37:17 PM](#)

SENATOR SHOWER suggested that the Judicial Council might like the names the governor submits and could decide not to submit any additional names or vice versa. He wondered if requiring a minimum number of names might needlessly restrict the governor or the Judicial Council. He added that he was not opposed to the change.

[2:39:11 PM](#)

SENATOR KIEHL offered his view that Mr. Fisher's language would suffice. He expressed an interest in having Senator Hughes contemplate the structure.

[2:39:23 PM](#)

SENATOR HUGHES suggested that if the selection process went to the second round and the screening process found issues with the names of the governor's subsequent judicial applicants, it might be possible for the Judicial Council to force the governor to select someone from the first list. She expressed an interest in avoiding recent issues that arose when the Judicial Council forwarded names to the governor that were unpalatable. She suggested that the language, "The governor shall submit the names of not more than two" would give the governor the option to not submit any names but still allow him/her to submit names of two judicial applicants. However, she suggested limiting the names the Judicial Council could submit to avoid the prior issue.

[2:42:18 PM](#)

SENATOR SHOWER maintained his intent was to give the governor more choices to avoid a stalled process. He suggested that it might make sense to require a minimum of two names to gain a larger pool of judicial candidates for the governor to consider.

[2:42:54 PM](#)

CHAIR REINBOLD suggested the committee consider some language from withdrawn Amendment 3 that sets a time limit for submitting candidate's names.

SENATOR HUGHES replied that she has discussed introducing a bill to speak to that specific language. She asked if the sponsor of Amendment 4 would entertain a friendly conceptual amendment. She referred to page 1, line 15, and suggested changing "may" to "shall" and on page 1, line 16, to insert "at least two" and not more than four.

SENATOR SHOWER asked the bill drafter if any additional places in the bill would need conforming changes.

[2:44:31 PM](#)

MR. FISHER pointed out a policy consideration. He explained that that the language would require the Judicial Council to submit two to four names to the governor for appointments. If the governor decided not to select a name in the first round, this

language would not require the Judicial Council to submit two to four names for consideration in the first round.

[2:45:15 PM](#)

SENATOR HUGHES asked if the proposed conceptual amendment would mean that the Judicial Council would not need to submit any names in the first round. She explained her intention was aimed at the second round so the Judicial Council would be required to submit at least two names.

MR. FISHER said that is correct. He explained the effect of the proposed conceptual amendment on page 1, line 15, to change "may" to "shall" and on page 1, line 16, insert "at least two" and to make the change in the corresponding section in AS 22.15.170. This change would require the Judicial Council to submit names in the second round, but it would not place a requirement on the Judicial Council in the first round of judicial selection.

[2:46:15 PM](#)

SENATOR MYERS expressed concern that the Judicial Council might "balk" at the nominees in the second round and require the governor to pick from the first list. He explained that this issue would not arise in the first round because if the Judicial Council does not submit names, it would not have any control over the nominees. However, this issue could arise in the second round, he said.

[2:46:54 PM](#)

CHAIR REINBOLD referred to page 1, line 9, to "[OF TWO OR MORE PERSONS]" and on lines 11 -12 to not give the governor the option of not appointing someone.

MR. FISHER stated that it would be a policy call whether the committee removes the language "If the governor does not appoint a person from the first round" He offered his view that taking away language would potentially limit the nominations to one round. Further, removing the brackets on page 1, line 9, from "[OF TWO OR MORE PERSONS]" would reinsert two or more persons nominated by the Judicial Council. He suggested it would be clearer to place the number of persons submitted by the Judicial Council in the second round in lines 15 - 16 of page 1 because that language gives instructions to the Judicial Council about submitting additional names in the second round of selection and qualification review.

[2:48:52 PM](#)

SENATOR HUGHES agreed with Senator Myers that the issue would only arise with the second round since the Judicial Council would want to submit names of qualified persons.

[2:49:23 PM](#)

SENATOR HUGHES moved to adopt a friendly Conceptual Amendment to Amendment 4, on line 15, change "may" to "shall", and [at the beginning of] line 16, insert "at least two and." She explained that this would require the Judicial Council to submit at least two names in the second round.

[2:50:07 PM](#)

CHAIR REINBOLD objected for discussion purposes.

[2:50:16 PM](#)

SENATOR KIEHL asked what happens if the governor submits two names to the Judicial Council, but no one applies. He suggested that changing "may" to "shall" requires the Judicial Council to find two people.

[2:51:08 PM](#)

SENATOR HUGHES said there is an attorney pool so the Judicial Council would merely go back to the group of applicants.

[2:51:29 PM](#)

SENATOR MYERS suggested that the committee would need a second conceptual amendment to fix one section for vacancies. He said it would also require revising the next section [AS 22.15.170] on page 3 related to vacancies due to retirement or death or retention election.

[2:52:18 PM](#)

SENATOR SHOWER asked Legislative Legal Services to weigh in.

[2:52:40 PM](#)

CHAIR REINBOLD recapped the Conceptual Amendment 1 to Amendment 4.

MR. FISHER asked members to include the ability to make conforming changes so all the bill pieces can work together. Conceptual Amendment 1 to Amendment 4 would require the Judicial Council to submit two persons and not more than four additional persons under (b) of this section. Currently subsection (b) states that the Judicial Council may submit up to four additional persons. In response to Senator Myers' concern that changes would need to be made to AS 22.15.170, he indicated that that statute would apply to district court judges and magistrate

judges. He agreed that changes would need to be made in that section [AS 22.15.170(a)] and on page 3 to [AS 22.125.170(e)].

MR. FISHER referred to page 2, lines 1-3 to AS 22.07.070 (b) and the corresponding section in AS 22.15 and read, "Upon the occurrence of (1) an actual vacancy; (2) the certification or rejection following an election; (3) the election following failure of a judge to file a declaration of candidacy; or (4) the decision of the governor not to appoint a person under (a)...." He said this would fall under the 90-day window for the governor to submit nominations to the Judicial Council and another 90-day window for the Judicial Council to review the names and submit up to four additional names.

MR. FISHER referred to page 3, line 13 and read, "In the event of an impending vacancy, other than by reason of rejection or failure to file a declaration, the governor may submit the names, and the Judicial Council may go through its process in the 90 days preceding the vacancy." In the event that the dates are known, this language gives the governor and the Judicial Council the ability to act earlier if all parties complete their requirements, such as submitting and reviewing names and reporting the names back to the governor. The trigger to make this process begin for filling the vacancy [is on page 2, lines 1-2 of Amendment 4] in subsection (b). He read, "(1) an actual vacancy; (2) the certification of rejection following an election; [OR] (3) the election following the failure of a judge to file a declaration of candidacy;." This language will create the 90-day trigger at the latest following the actual vacancy of the judicial office, he said.

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SENATOR HUGHES restated her motion to adopt a Conceptual Amendment to Amendment 4. On page 1, line 15, change "may" to "shall", and [at the beginning of] line 16, insert "at least two and." She asked Legislative Legal to make any necessary conforming changes.

CHAIR REINBOLD removed her objection. There being no further objection, the Conceptual Amendment to Amendment 4 was adopted.

CHAIR REINBOLD removed her objection to the Conceptual Amendment to Amendment 4. There being no further objection, Conceptual Amendment to Amendment 4 passed.

[2:58:04 PM](#)

CHAIR REINBOLD removed her objection to Amendment 4, as amended.

[2:48:22 PM](#)

SENATOR KIEHL objected.

[2:58:25 PM](#)

A roll call vote was taken. Senators Shower, Hughes, Myers, and Reinbold voted in favor of Amendment 4, as amended, and Senator Kiehl voted against it. Therefore, Amendment 4, as amended, passed by a 4:1 vote.

CHAIR REINBOLD announced that Amendment 4, [as amended], was adopted by a vote of 4 yeas, 1 nay.

[2:58:54 PM](#)

SENATOR MYERS withdrew Amendment 1.

[2:59:12 PM](#)

CHAIR REINBOLD indicated her intent to hold the bill in committee, awaiting the committee substitute and amended fiscal notes.

[2:59:35 PM](#)

SENATOR HUGHES asked the flowchart diagrams to be updated to reflect the new process and title.

[SB 14 was held in committee].

[3:01:05 PM](#)

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