

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 1, 2021

1:37 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Robert Myers

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."

- MOVED CSSB 14 (JUD) OUT OF COMMITTEE

SENATE BILL NO. 82

"An Act relating to elections and election investigations."

- HEARD & HELD

SENATE BILL NO. 43

"An Act relating to campaign finance and initiatives; relating to elections and voting; and relating to unlawful interference with voting."

- HEARING CANCELED

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
02/22/21	(S)	Heard & Held
02/22/21	(S)	MINUTE(JUD)
02/24/21	(S)	JUD AT 1:30 PM BUTROVICH 205
02/24/21	(S)	Heard & Held
02/24/21	(S)	MINUTE(JUD)
03/01/21	(S)	JUD AT 1:30 PM BUTROVICH 205

BILL: SB 82

SHORT TITLE: ELECTIONS; ELECTION INVESTIGATIONS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/12/21	(S)	READ THE FIRST TIME - REFERRALS
02/12/21	(S)	JUD, STA, FIN
03/01/21	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

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

POSITION STATEMENT: Presented three fiscal notes for SB 14 on behalf of the sponsor, Senator Mike Shower.

ACTION NARRATIVE

[1:37:21 PM](#)

CHAIR LORA REINBOLD called the Senate Judiciary Standing Committee meeting to order at 1:37 p.m. Present at the call to order were Senators Hughes, Shower, Kiehl, and Chair Reinbold.

1:37:25

At ease

CHAIR REINBOLD indicated the committee was waiting to upload documents to BASIS. The committee was at ease.

SB 14-SELECTION AND REVIEW OF JUDGES

[1:55:45 PM](#)

CHAIR REINBOLD reconvened the meeting and announced the consideration of 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." [CSSB 14(JUD)\B] was before the committee.

[1:56:03 PM](#)

SCOTT OGAN, Staff, Senator Mike Shower, Alaska State Legislature, Juneau, Alaska, reviewed the three fiscal notes for SB 14 on behalf of the sponsor.

MR. OGAN referred to Fiscal Note 1, an indeterminate fiscal note from the Alaska Court System (Court System}, OMB [Office of Management and Budget] component 768. He related that the ACS expressed concern about potential delays in filling vacant judgeships and magistrate positions. For example, if the governor rejects the Alaska Judicial Council's (Judicial Council) list of recommended judicial candidates. In that case, the court will likely need to hire pro tem judges or acting district court judges to handle the incoming and ongoing caseload. Secondly, the ACS expressed concern that adding ethical reviews for magistrates could result in a lack of magistrate applicants. However, in his view, the pool would probably increase rather than decrease.

[1:58:36 PM](#)

SENATOR HUGHES asked if potential delays in appointing judges could be remedied by amending the bill to add a deadline. She explained that an indeterminate fiscal note was not the same as a zero fiscal note. Instead, it meant that the Court System would likely incur expenses but the agency was not yet sure of the cost.

MR. OGAN advised members that he spoke with the Legislative Legal attorney about the possibility of giving judges the authority to act before being confirmed. He suggested it may be possible for the legislature to grant express authority but the legal issues were not yet resolved. One issue that arose was if judges worked on cases prior to confirmation, it could jeopardize those cases.

[2:00:11 PM](#)

SENATOR SHOWER advised members that he had just received the fiscal notes, so he was unsure how to handle the Court System's concerns. He indicated his preference was to continue to work on the bill in subsequent committees in the other body. He explained that the goal was to expand the judicial applicants' pool and assert the legislative supremacy doctrine.

[2:01:26 PM](#)

SENATOR HUGHES stated that knowing Legislative Legal has not yet considered if an applicant could sit as a judge answers her question. She suggested that perhaps this issue could be addressed statutorily. She was unsure of the costs of hiring pro tem judges. However, it appeared as though the vacancies could be up to 18 months so it would be necessary. She offered her view that this issue would still need to be addressed as the bill moves through the process.

SENATOR SHOWER offered his view that determining costs that the agencies could absorb was subjective.

[2:03:00 PM](#)

MR. OGAN reviewed Fiscal Note 2 by the Commission on Judicial Conduct (CJC), OMB component 770, for \$64,000 in FY 2022. He said the CJC does not currently review the ethics for magistrates. However, since magistrates serve at the pleasure of the chief justice of the Alaska Supreme Court (ASC), if any ethical issues arose, the Court System would handle them, he said. According to CJC, this bill would add agency staff review of any complaints against magistrates.

[2:04:16 PM](#)

SENATOR KIEHL recalled that magistrates were judicial officers of the District Court, not under the jurisdiction of the Alaska Supreme Court.

MR. OGAN said he stands corrected.

[2:04:38 PM](#)

SENATOR SHOWER offered his view that agency could absorb the costs to implement SB 14. He said he entertains the idea of zeroing out the fiscal notes but deferred to the will of the committee.

CHAIR REINBOLD solicited a motion.

[2:04:56 PM](#)

SENATOR SHOWER moved to zero out the fiscal note [Fiscal Note 2] for the Commission on Judicial Conduct (CJC), OMB component 770.

CHAIR REINBOLD objected for discussion purposes.

SENATOR KIEHL explained that Fiscal Note 2 reflects 14 percent of the agency's current budget, which would be a considerable amount to absorb. He said CJC explained the expansion of its work and limited it to one part-time position under SB 14.

SENATOR SHOWER expressed his interest in discussing the fiscal note in detail with CJC before the bill is heard in a subsequent committee. He maintained his preference to zero out the fiscal note. He said he was open to amendments to SB 14 to help reduce the overall costs.

SENATOR KIEHL objected to zeroing out the fiscal note. He suggested that the time to zero out the fiscal note should be when changes are made to the bill to reduce the cost to CJC.

[2:07:37 PM](#)

SENATOR HUGHES recalled that the executive director initially related that the agency could absorb the functions proposed under the bill but later decided otherwise. She reviewed the fiscal note narrative, which stated SB 14 might require adding a meeting or two or increased travel expenses. However, CJC does not currently run full-day meetings, so she questions the fiscal note. She offered her support to zero out the fiscal note.

CHAIR REINBOLD remarked that the committee spent substantial time deliberating on SB 14. The committee has considered amendments to streamline the process and address concerns. She

pointed out that the state is currently in a fiscal crisis. She offered her support for the motion.

CHAIR REINBOLD removed her objection.

[2:09:11 PM](#)

SENATOR KIEHL maintained his objection.

A roll call vote was taken. Senators Shower, Hughes, and Reinbold voted in favor of the motion to zero out Fiscal Note 2 by the Commission on Judicial Conduct and Senator Kiehl voted against it. Therefore, the motion to zero out the fiscal note by the CJC passed by a 3:1 vote.

CHAIR REINBOLD stated that the motion passed by a vote of 3 yeas, 1 nay.

[2:09:46 PM](#)

MR. OGAN reviewed Fiscal Note 3, by the Alaska Judicial Council (Judicial Council), OMB Component 771, in the amount of \$78,500. He related the Court System's concerns. First, magistrates would increase the council's workload. Further, a possible second round of applicants could arise for the same vacancy.

MR. OGAN argued it was doubtful that the governor would reject his/her candidates unless the Judicial Council found issues while conducting background reviews. He pointed out that the Judicial Council currently reviews candidates for judicial vacancies. According to the Judicial Council, the additional costs would cover reviewing magistrate candidates. However, it will still use the same process. He asked the record to reflect that the Judicial Council was willing to absorb some costs.

[2:12:10 PM](#)

SENATOR SHOWER offered his view that the same arguments could be made for this fiscal note as the previous one. He echoed the sentiment that the agency was willing to absorb some costs. He acknowledged that tension exists between the legislature and the judicial branch. He said he was not sure if all of the work could be absorbed by the council.

[2:13:04 PM](#)

SENATOR SHOWER moved to zero out Fiscal Note 3, by the Alaska Judicial Council, OMB Component 771.

CHAIR REINBOLD objected for discussion purposes.

SENATOR KIEHL remarked that fiscal note 3 appears to be a modest fiscal note. He stated that the Judicial Council found ways to take on some additional duties with its current staff. However, he said most of the work required under the bill would be contract work. If additional funding is not provided, it represents about 6 percent of the council's Unrestricted General Fund (UGF) funding.

[2:15:29 PM](#)

CHAIR REINBOLD characterized Fiscal Note 3 as a small one to cover travel costs of approximately \$26,000 and services of \$52,000. Under the bill, the Judicial Council would screen any candidates for magistrates and recommend nominees to the governor. She related the fiscal note narrative estimates about six magistrate vacancies occur each year. She said it seems like the council could absorb these costs.

[2:16:41 PM](#)

SENATOR HUGHES echoed her appreciation that the Judicial Council was willing to absorb some costs. She said the fiscal note relates to contract survey services. However, the Judicial Council already conducts surveys, she said. Since the Judicial Council never knows how many judges and applicants it may need to review, it is possible fewer candidates would apply, so some council funding for judicial reviews could be used to conduct magistrate reviews. Further, the fiscal note reflects the Judicial Council's request for additional funds to conduct outreach. She offered her belief that outreach occurred in the election pamphlet, so any additional costs should not be in the thousands of dollars. She offered her support for the motion.

[2:18:50 PM](#)

CHAIR REINBOLD removed her objection.

SENATOR KIEHL objected. He offered his view that the Judicial Council's work on judicial retention for magistrates would be additional work. He agreed that public outreach costs are negligible, but costs associated with advertising, conducting comprehensive surveys of jurors, police officers and collating responses were not. He maintained his objection.

[2:20:04 PM](#)

A roll call vote was taken. Senators Shower, Hughes, and Reinbold voted in favor of zeroing out Fiscal Note 3, OMB component 771, by the Judicial Council and Senator Kiehl voted against it. Therefore, the motion to zero out the fiscal note by the Judicial Council passed by a vote of 3:1.

CHAIR REINBOLD announced that the motion passed by a vote of 3 yeas, 1 nay.

2:20:40 PM

SENATOR SHOWER expressed his willingness to work on SB 14, including the fiscal notes.

2:21:52 PM

SENATOR SHOWER moved to report the committee substitute (CS) for SB 14 [work order 32-LS0171\B] out of committee with the attached fiscal notes.

CHAIR REINBOLD objected.

SENATOR KIEHL stated that while he appreciated the work on the bill, it was designed to insert politics into the judicial selection process. He offered his view that this was the wrong direction to go. He said that Alaska has the best constitutional provisions of all 50 states in terms of judicial selection. The current process keeps politics out of judicial appointments. The committee discussed the need for judges to be accountable to the electorate and legislators. US Supreme Court Chief Justice John Roberts said in a recent ruling that the US Constitution entrusts the protection of the people's rights to the judiciary "not despite judges being shielded but because they are."

SENATOR KIEHL said he has heard his constituents lament that no judges are far-left leaning, yet public testifiers complained that no hard-right judges were sitting on the bench. He interpreted Chief Justice Roberts ruling as saying that judges "call balls and strikes."

SENATOR KIEHL expressed concern that the bill would add politics into the process, but it is essential to keep as much politics out of the judiciary as possible. Concerns were raised that an imbalance exists on the Judicial Council. He argued it is a nonissue. In fact, when the attorney and non-attorney members serving on Judicial Council were split on a decision, the chief justice of the Alaska Supreme Court voted with the attorney members 7 times out of 1,461 votes. Further, in 6 of those 7 cases, the governor received more than two recommended nominees. The structural changes in the bill do not follow Alaska's Constitution and it addresses a nonissue, he said.

SENATOR KIEHL said SB 14 will create new issues. He offered that it would make hiring and firing magistrates more challenging.

The Judicial Council's application process is extensive and the public vetting process is thorough and complex. Judges have indicated that applying for a judgeship was the single most significant impediment. The retention elections can be off-putting to many applicants, he said. Further, SB 14's fiscal impact is \$140,000, which creates more government but obtains worse results, he said. He remarked that the work remains to be done even though the fiscal note is zeroed out.

SENATOR KIEHL recalled that in a previous legislature before the Senate Judiciary Committee, Senator Micciche said, "I appreciate the statement about us not being overly political and the people that we confirm, but that just simply isn't the case. We did things up from elementary school..." For example, he noted the political nature of the Board of Fisheries appointees, among others.

SENATOR KIEHL offered his view that SB 14 fails to fix what is not a problem and that it would amp up the most apolitical system in all 50 states. He maintained his objection to move the bill.

[2:28:51 PM](#)

SENATOR HUGHES reminded members that the Alaska Constitution establishes the process for judicial selections to Superior Court and the Alaska Supreme Court. The framers left out the lower courts but could have easily considered them. She argued that it is challenging to remove politics from the system. However, she offered her belief that this bill would lessen politics in the judiciary because it would increase the accountability of judges.

SENATOR HUGHES related she has often heard Alaska's judicial selection process is one of the best in the country. However, she has only heard some attorneys say so. Other attorneys have privately told her that the system is rigged. She reminded members that government is "of the people, by the people, and for the people." She argued that this statement is not limited to the executive and legislative branches but was also intended to apply to the judicial branches. She heard the sponsor state one result of SB 14 is that it will reflect the people's values. Somehow the judicial branch is almost placed in an elite class, yet judges fall under the same constitutional language, "of the people, by the people, and for the people," she said. Instead of politicizing the process, the changes in SB 14 will place a check on politics and bring accountability to the process. Judges serve the people in Alaska. The procedure established in

SB 14 is specifically allowable by the Alaska Constitution. She offered her support for SB 14.

[2:32:39 PM](#)

CHAIR REINBOLD related her understanding that this bill would change the appointment process similar to the federal process for appointing judges. She read the definition of politics, "The activities associated with the governance of the country and other areas, especially in debate or conflict among individuals, parties, or having hope to achieve power."

CHAIR REINBOLD emphasized that politics affects everything. The courts currently can strike down bills passed by the legislature or initiatives passed by the voters without any accountability. She said that the legislative branch is supposed to have legislative supremacy and be the strongest branch of government. Currently, thousands of cases are not prosecuted in Alaska. She expressed her interest in having additional oversight of the courts, including legislative confirmation of judicial candidates. She characterized the process in SB 14 as being closer to the people. She offered her support for SB 14.

[2:35:53 PM](#)

SENATOR SHOWER disagreed with Senator Kiehl on the number of times the Alaska Supreme Court chief justice has been the tie-breaking vote. He said it was 19 times out of 1,000, not 7 times.

SENATOR SHOWER highlighted that the Alaska Constitution sets out procedures for judicial selection for the Alaska Supreme Court and Superior Court. Still, the legislature has the authority to determine the judicial selection process for the lower courts. He maintained his belief that the judiciary is political. For example, the chief justice directed the Court System's liaison to oppose this bill, he said. He surmised that some judges had declined to testify at the hearing for this bill out of fear. Even so, 90 percent of the public comment favored the bill. He maintained his view that currently, the courts have limited accountability.

SENATOR SHOWER informed members that the Legislative Finance Division's staff indicated that the motion to move the bill should be restated to acknowledge the forthcoming fiscal notes [since the committee zeroed out two fiscal notes].

[2:40:49 PM](#)

SENATOR KIEHL corrected his earlier testimony. He clarified that the chief justice of the Alaska Supreme Court voted 7 times with the other attorneys not to forward a name to the governor and none was forwarded.

[2:41:43 PM](#)

SENATOR HUGHES characterized SB 14 as a significant bill. She maintained her view that this bill provides a better form of a constitutional representative democratic republic within the judiciary branch by allowing the people's voice to weigh in. She pointed out that a recent stack of emails showed support for SB 14 throughout the state. She recalled that hundreds of people had contacted her on this issue.

CHAIR REINBOLD offered her belief that the US has a representative Republican form of government.

[2:42:48 PM](#)

At ease

[2:43:48 PM](#)

CHAIR REINBOLD reconvened the meeting.

CHAIR REINBOLD solicited a corrected motion.

[The committee treated it as though Senator Shower withdrew his motion to move the committee substitute for SB 14, Version B, and that Chair Reinbold removed her objection.]

[2:43:57 PM](#)

SENATOR SHOWER restated his motion. He moved to report the committee substitute (CS) for SB 14, Version 32-LS0171\B from committee with individual recommendations and forthcoming fiscal notes.

SENATOR KIEHL objected.

[2:44:17 PM](#)

A roll call vote was taken. Senators Hughes, Shower, and Reinbold voted in favor of moving the committee substitute (CS) for SB 14, Version B, out of committee with forthcoming fiscal notes. Senator Kiehl voted against it. Therefore, CSSB 14(JUD) was reported from the Senate Judiciary Standing Committee by a vote of 3 yeas, 1 nay.

CHAIR REINBOLD announced that the CSSB 14(JUD), Version B, was reported out of committee.

SB 82-ELECTIONS; ELECTION INVESTIGATIONS

[2:45:03 PM](#)

CHAIR REINBOLD announced that the order of business before the committee would be SENATE BILL NO. 82, "An Act relating to elections and election investigations."

[2:45:16 PM](#)

CHAIR REINBOLD said no one from the administration is available to address the bill.

[SB 82 was held in committee].

[2:46:09 PM](#)

There being no further business to come before the committee, Chair Reinbold adjourned the Senate Judiciary Standing Committee meeting at 2:46 p.m.