

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 31

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATOR SHOWER

Introduced: 3/8/23

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* **Sec. 7.** 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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. 13.** 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 court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, or a district court judge.

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