

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 7

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 For an Act entitled: "An Act relating to the supreme and
6 superior courts of the State of Alaska;
7 providing for the promulgation of rules
8 of civil and criminal proceedings within
9 the courts of the State of Alaska; pro-
10 viding for their jurisdiction, the nomina-
11 tion, appointment, and qualification of
12 justices and judges; providing for the
13 periodical approval by the voters; pro-
14 viding for the filling of vacancies and
15 removal of justices and judges; providing
16 for the compensation of justices and
17 judges; providing for the administration
18 of the court system; and providing for an
19 effective date."

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

21 ARTICLE I. SUPREME COURT

22 Section 1. JURISDICTION. The supreme court has final
23 appellate jurisdiction in all actions and proceedings. The
24 supreme court may issue injunctions, writs of review, mandamus,
25 certiorari, prohibition, habeas corpus, and all other writs
26 necessary or proper to the complete exercise of its appellate and
27 other jurisdiction. Each of the justices may issue writs of
28 habeas corpus, upon petition by or on behalf of any person held
29 in actual custody and may make such writs returnable before the

1 justice himself or before the supreme court, or before any judge
2 of the superior court of the State. Appeals to the supreme court
3 shall be a matter of right, except that the State shall have no
4 right of appeal in criminal cases, except to test the sufficiency
5 of the indictment or information.

6 Sec. 2. COURT OF RECORD: COMPOSITION: GENERAL POWERS.
7 The supreme court is a court of record, consists of three justices
8 including the chief justice, and is vested with all power and
9 authority necessary to carry into complete execution all its
10 judgments, decrees and determinations in all matters within its
11 jurisdiction, according to the Constitution, the laws of the
12 State, and the common law.

13 Sec. 3. SESSIONS OF COURT. The supreme court shall always
14 be open for the transaction of business in the manner determined
15 by rule of the court. The supreme court shall hold sessions on
16 dates and at places fixed by court rule.

17 The administrative director of courts shall maintain his
18 office at the same place in the State as the supreme court
19 maintains its headquarters.

20 Sec. 4. EFFECT OF ADJOURNMENT. Adjournments from day to
21 day, or from time to time, are to be construed as recesses in
22 the session, and shall not prevent the court from sitting at
23 any time.

24 Sec. 5. STYLE OF PROCESS. Process of the supreme court
25 shall be in the name of the "State of Alaska", be signed by
26 the clerk of the court or his deputy, be dated when issued, sealed
27 with the seal of the court, and made returnable according to
28 rule prescribed by the court.

29 Sec. 6. SEAL OF COURT. The seal of the supreme court shall
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1 be the vignette of the official flag of Alaska with the words
2 "Seal of the Supreme Court of the State of Alaska", surrounding
3 the vignette.

4 Sec. 7. QUALIFICATIONS OF JUSTICES. A justice of the
5 supreme court shall be a citizen of the United States and of
6 the State, a resident of Alaska for three years immediately
7 preceding his appointment, and have been engaged for not less
8 than eight years immediately preceding his appointment in the
9 active practice of law, and at the time of appointment be
10 licensed to practice law in Alaska. The active practice of law
11 shall include:

12 (1) Sitting as a judge in a state or territorial court.

13 (2) Actually being engaged in advising and representing
14 clients in matters of law.

15 (3) Rendering legal services to any agency, branch, or
16 department of a civil government within the United States or any
17 state or territory thereof, in an elective, appointive or em-
18 ployed capacity.

19 (4) Serving as a professor, associate professor, or
20 assistant professor in a law school accredited by the American
21 Bar Association.

22 Sec. 8. VACANCIES.

23 (1) INITIAL VACANCIES. The Governor shall initially
24 fill the offices of supreme court justices, including the office
25 of chief justice, within forty-five days after receiving nomina-
26 tions from the Judicial Council, by appointing one of two or more
27 persons nominated by the Council for each position.

28 (2) VACANCIES. The Governor shall fill any vacancy in
29 the offices of supreme court justices, including the office of

1 chief justice, within forty-five days after receiving nominations
2 from the Judicial Council, by appointing one of two or more per-
3 sons nominated by the Council for each vacant position.

4 The office of a supreme court justice, including the office
5 of chief justice, becomes vacant ninety days after the election
6 at which he is rejected by a majority of those voting on the
7 question, or for which he failed to file his declaration of
8 candidacy to succeed himself, and his successor may be appointed
9 during this period, such appointment to become effective upon the
10 vacancy occurring. A vacancy in said offices may also occur by
11 reason of the death, retirement, resignation, forfeiture, or
12 removal from office of any justice. In the event of any vacancy
13 other than an initial vacancy, or immediately upon certification
14 of rejection following an election, or immediately upon failure
15 of a justice to file declaration of candidacy, the Judicial
16 Council shall meet within thirty days after any of the said events
17 occur and submit to the Governor the names of two or more persons
18 nominated to fill each such vacancy.

19 Sec. 9. OATH OF OFFICE. Each supreme court justice, upon
20 entering office, shall take and subscribe to an oath of office,
21 required of all public officers under the Constitution and such
22 further oaths or affirmations as may be prescribed by law.

23 Sec. 10. APPROVAL OR REJECTION.

24 (1) Each supreme court justice shall be subject to
25 approval or rejection on a separate non-partisan statewide ballot
26 at the first general election held more than three years after
27 his appointment, and if approved by a majority of the electors
28 voting on his candidacy, he shall be retained in office. He shall
29 thereafter be subject to approval or rejection in a like manner

1 every tenth year. If a majority of those voting on his candidacy
2 reject his candidacy, he may not for a period of four years there-
3 after be appointed to fill any vacancy in the supreme or superior
4 courts of the State.

5 (2) Each justice seeking to succeed himself to office
6 shall file with the Secretary of State a declaration of such
7 candidacy not less than ninety days before the date fixed for
8 general election at which approval or rejection is requisite.
9 The Secretary of State shall promptly certify such candidacy to
10 the election officials of the State, who shall prepare, and have
11 available at the polls, a separate statewide ballot upon which
12 there shall be stated the proposition: "Shall _____
13 _____ be retained as justice of the supreme court
14 for ten years," with proper provision for the marking of such pro-
15 positions as "yes" or "no". The ballots shall be counted, re-
16 turned, canvassed and certified in the manner provided by law for
17 elective offices.

18 Sec. 11. INCAPACITY. Whenever the Judicial Council certi-
19 fies to the Governor that a supreme court justice appears to be
20 so incapacitated as substantially to prevent him from performing
21 his judicial duties, the Governor shall appoint a board of three
22 persons to inquire into the circumstances, and may on the board's
23 recommendation retire the justice, provided, however, the justice
24 shall be given a notice in writing of a hearing thereon to be
25 held not sooner than thirty days thereafter.

26 Sec. 12. IMPEACHMENT. A supreme court justice is subject
27 to impeachment by the Legislature for malfeasance or misfeasance
28 in the performance of his official duties. Impeachment shall
29 originate in the Senate and must be approved by a two-thirds

1 vote of its members. The motion for impeachment shall list fully
2 the basis for the proceeding. Trial on impeachment shall be con-
3 ducted by the House of Representatives. A supreme court justice
4 designated by the court shall preside at the trial. Concurrence
5 of two-thirds of the members of the House is required for a judg-
6 ment of impeachment. The judgment may not extend beyond removal
7 from office, but shall not prevent proceedings in the courts on
8 the same or related charges.

9 Sec. 13. RESTRICTIONS. A supreme court justice while
10 holding office may not practice law, hold office in a political
11 party, or hold any other office or position of profit under the
12 United States, the State or its political subdivisions. Any
13 supreme court justice filing for another elective public office
14 forfeits his judicial position.

15 Sec. 14. COMPENSATION.

16 (1) The chief justice shall receive \$23,500.00 annually,
17 and each associate justice shall receive \$22,500.00 annually as
18 compensation, payable monthly in twelve equal installments. Com-
19 pensation of the chief justice or of an associate justice shall
20 not be diminished during his term of office, unless by general
21 law applying to all salaried officers of the State.

22 (2) No salary warrant shall be issued to any justice of
23 the supreme court until he has made and filed with the State officer
24 designated to issue salary warrants an affidavit that no matter
25 referred to the justice for opinion or decision has been un-
26 completed or undecided by him for a period of more than six months.

27 (3) In the determination of causes, all decisions of
28 the supreme court shall be given in writing, and the grounds of
29 the decision shall be stated.

1 Constitution on the effective date
2 of this Act.

3 Sec. 17. JURISDICTION AND VENUE.

4 (1) (a) The superior court is the trial court of
5 general jurisdiction, with original jurisdiction in all civil
6 and criminal matters, specifically including, but not limited
7 to probate, and guardianship of minors and incompetents. The
8 superior court and its judges may issue injunctions, writs of re-
9 view, mandamus, prohibition, habeas corpus and all other writs
10 necessary or proper to the complete exercise of its jurisdiction.
11 A writ of habeas corpus may be made returnable before any judge
12 of the superior court. The superior court has jurisdiction in
13 all matters appealed to it from a subordinate court, or adminis-
14 trative agency when such appeal is provided by law. All such
15 appeals shall be a matter of right, except no appeal shall be
16 taken in any criminal case after a plea of guilty or by the State,
17 except to test the sufficiency of the indictment or information.
18 All hearings on appeal from any final order or judgment of a
19 subordinate court or administrative agency shall be on the record
20 unless the superior court, in its discretion, shall grant a trial
21 de novo, in whole or in part.

22 (b) In case of an actual controversy within the State, the
23 superior court, upon the filing of an appropriate pleading, may
24 declare the rights and other legal relations of any interested
25 party seeking such declaration, whether or not further relief is
26 or could be sought. Any such declaration shall have the force and
27 effect of a final judgment or decree and shall be reviewable as
28 such. Further necessary or proper relief based on a declaratory
29 judgment or decree may be granted, after reasonable notice and

1 hearing, against any adverse party whose rights have been determin-
2 ed by such judgment.

3 (2) The jurisdiction of the superior court shall extend
4 over the whole of the State. All actions in ejectment or for the
5 recovery of the possession of, quieting title to, for the partition
6 of, or the enforcement of liens upon, real property shall be
7 commenced in the judicial district in which the real property, or
8 any part thereof affected by such action or actions, is situated.

9 (3) The court in which the action is pending may change
10 the place of trial in any action from one place to another place
11 in the same judicial district or to a designated place in another
12 judicial district in any of the following cases:

13 First: When there is reason to believe that an impartial
14 trial cannot be had therein;

15 Second: When the convenience of witnesses and the ends of
16 justice would be promoted by the change;

17 Third: When for any cause the judge is disqualified from
18 acting; but in such event, if the judge of another judicial dis-
19 trict is assigned to try the action, no change of place of trial
20 need be made;

21 Fourth: If the court finds that the defendant will be put
22 to unnecessary expense and inconvenience. Should the court find
23 that said expense and inconvenience was intentionally caused, the
24 court may assess costs against the plaintiff.

25 Sec. 18. COURTS OF RECORD: GENERAL POWERS: SESSIONS. The
26 superior court shall always be open, except on judicial holidays,
27 determined by rule of the supreme court, except that injunctions,
28 writs of prohibition, mandamus and habeas corpus may be issued and
29 served on holidays and non-judicial days. The superior court is

1 a court of record and is vested with all power and authority
2 necessary to carry into complete execution all its judgments,
3 decrees and determinations in all matters within its jurisdiction
4 according to the Constitution, the laws of the State and the
5 common law. The superior court shall hold regular sessions in
6 each district at such times and at such place or places therein
7 as may be designated by rule or order of the supreme court.

8 Sec. 19. EFFECT OF ADJOURNMENT. Adjournments from day
9 to day, or from time to time, are to be construed as recesses
10 in the session, and shall not prevent the court from sitting
11 at any time.

12 Sec. 20. SEAL OF COURT. The seal of the superior court
13 shall be a vignette of the official flag of Alaska with the words
14 "Seal of the Superior Court of the State of Alaska", and a desig-
15 nation of the district thereof, surrounding the vignette.

16 Sec. 21. PROCESS. Process of the superior court shall be
17 in the name of the "State of Alaska", be signed by the clerk of
18 the court, or his deputy, in the judicial district where the
19 process is issued, be dated when issued, sealed with the seal of
20 the court, and made returnable according to rule prescribed by the
21 supreme court.

22 Sec. 22. QUALIFICATIONS OF JUDGES. A judge of the superior
23 court shall be a citizen of the United States and of the State,
24 a resident of Alaska for three years immediately preceding his
25 appointment, have been engaged for not less than five years
26 immediately preceding his appointment in the active practice of
27 law, and at the time of appointment be licensed to practice law in
28 Alaska. The active practice of law shall be as defined for
29 supreme court justices.

1 Sec. 23. VACANCIES.

2 (1) INITIAL VACANCIES. The governor shall initially
3 fill the offices of superior court judges within forty-five days
4 after receiving nominations from the Judicial Council by appoint-
5 ing one of two or more persons nominated by the Council for each
6 position.

7 (2) VACANCIES. The governor shall fill any vacancy
8 in the offices of superior court judges within forty-five days
9 after receiving nominations from the Judicial Council by appoint-
10 ing one of two or more persons nominated by the Council for each
11 vacant position.

12 The office of a superior court judge becomes vacant ninety
13 days after the election at which he is rejected by a majority of
14 those voting on the question, or for which he failed to file
15 his declaration of candidacy to succeed himself, and his successor
16 may be appointed during this period, such appointment to become
17 effective upon the vacancy occurring. A vacancy in said offices
18 may also occur by reason of the death, retirement, resignation,
19 forfeiture or removal from office of any judge. In the event of
20 any vacancy other than an initial vacancy, or immediately upon
21 failure of a judge to file declaration of candidacy, the Judicial
22 Council shall meet within the thirty days after any of the said
23 events occur and submit to the governor the names of two or more
24 persons nominated to fill each such vacancy.

25 Sec. 24. OATH OF OFFICE. Each superior court judge, upon
26 entering office, shall take and subscribe to an oath of office re-
27 quired of all officers under the Constitution, and, such further
28 oaths or affirmations as may be prescribed by law.

29 Sec. 25. NUMBER OF JUDGES.

1 (1) The superior court shall consist of eight judges
2 two of whom shall be judges in the first judicial district, one
3 of whom shall be judge in the second judicial district, three of
4 whom shall be judges in the third judicial district, and two of
5 whom shall be judges in the fourth judicial district. At the
6 time of submitting the names of any nominees to the governor to
7 fill any vacancy on the superior court bench, the Judicial Council
8 shall also designate the district in which the Appointee is to
9 reside and serve.

10 (2) A presiding judge shall be designated for each
11 district by the chief justice of the supreme court. The presiding
12 judge shall in addition to his regular judicial duties: (a)
13 assign the cases pending to the judges made available within the
14 district, (b) supervise the judge and his court personnel in
15 the carrying out of their official duties within the district, and
16 (c) expedite and keep current the business of the court within
17 the district.

18 (3) The chief justice may assign a judge and his court
19 personnel for temporary duty not to exceed ninety days anywhere
20 in Alaska.

21 Sec. 26. APPROVAL OR REJECTION.

22 (1) Each superior court judge shall be subject to approval
23 or rejection on a separate non-partisan ballot at the first
24 general election held more than three years after his appoint-
25 ment, and if approved by a majority of the electors voting on
26 his candidacy he shall be retained in office and he shall there-
27 after be subject to approval or rejection in a like manner
28 every sixth year. If a majority of those voting on his candidacy
29 reject his candidacy, he shall not for a period of four years

1 thereafter be appointed to fill any vacancy in that court.

2 (2) Each judge seeking to succeed himself to office shall
3 file with the Secretary of State a declaration of such candidacy
4 not less than ninety days before the date fixed for general elec-
5 tion at which approval or rejection is requisite. The judge shall
6 seek approval in the judicial district to which he was originally
7 assigned, except in case of a transfer with the judge's consent,
8 in which case he shall seek approval in the district where he has
9 served the major portion of his term, or where he last stood for
10 election. The Secretary of State shall promptly certify such
11 candidacy to the election officials of the state, who shall pre-
12 pare, and have available at the polls, a separate judicial dis-
13 trict-wide ballot upon which there shall be stated the proposi-
14 tion: "Shall _____ be retained as judge of
15 the superior court for six years", with proper provision for the
16 marking of such proposition as "yes" or "no". The ballots shall
17 be counted, returned, canvassed and certified in the manner pro-
18 vided by law for elective officers.

19 Sec. 27. INCAPACITY. Whenever a judge of the superior
20 court appears to be so incapacitated as substantially to prevent
21 him from performing his judicial duties, the Judicial Council
22 shall recommend to the supreme court that the judge be placed
23 under early retirement. After notice and hearing, the supreme
24 court by majority vote of its members may retire the judge.
25 Notice of the hearing shall be given to the judge in writing at
26 least thirty days prior thereto.

27 Sec. 28. IMPEACHMENT. A superior court judge is subject to
28 impeachment by the Legislature for malfeasance or misfeasance in
29 the performance of his official duties. Impeachment shall origin-

1 ate in the Senate and must be approved by two-thirds vote of its
2 members. The motion for impeachment shall list fully the basis
3 for the proceedings. Trial on impeachment shall be conducted by
4 the House of Representatives. A supreme court justice designated
5 by the court shall preside at the trial. Concurrence of two-
6 thirds of the members of the House is required for a judgment of
7 impeachment. The judgment may not extend beyond the removal from
8 office, but shall not prevent proceedings in the courts on the
9 same related charges.

10 Sec. 29. RESTRICTIONS. A superior court judge while
11 holding office may not practice law, hold office in a political
12 party, or hold any other office or position of profit under the
13 United States, the state or its political subdivisions. Any
14 superior court judge filing for another elective public office
15 forfeits his judicial position.

16 Sec. 30. COMPENSATION.

17 (1) Each superior judge shall receive \$19,000.00
18 annually, as compensation, payable monthly in twelve equal install-
19 ments. The compensation of a judge shall not be diminished during
20 the term of office, unless by general law applying to all salaried
21 officers of the state.

22 (2) No salary warrant shall be issued to any superior
23 court judge until he has made and filed with the state officer
24 designated to issue salary warrants an affidavit that no cause
25 submitted to the judge for decision has been undecided by him for
26 more than six months.

27 (3) In the determination of causes all decisions of the
28 superior court shall be given in writing and filed with the clerk
29 within sixty (60) days after final submission thereof. The

1 grounds of the decision shall be separately stated as to questions
2 of fact and conclusions of law.

3
4 ARTICLE III ORGANIZATION

5 Sec. 31 COMMENCEMENT AND TRANSFER OF CAUSES.

6 (1) The state courts shall be deemed organized for the
7 purpose of transferring causes as provided in Section 17, Article
8 XV of the Constitution of the State of Alaska, on the 3rd day of
9 January, 1962. Provided, however, that causes may be commenced,
10 filed and determined in the state courts in each judicial dis-
11 trict at the time of the appointment of one or more judges for
12 such district.

13 (2) The jurisdiction of the courts of the state in
14 this Act provided shall be exclusive from and after the 3rd day
15 of January, 1962 but prior to that date shall be non-exclusive,
16 and nothing in this Act shall diminish or deprive the District
17 Court of the State of Alaska or the Court of Appeals or the
18 Supreme Court of the United States of jurisdiction as provided by
19 Public Law 508, 85th Congress, and other laws applicable thereto.

20 Sec. 32. DECLARATION OF INTENT AND METHOD OF TRANSITION.

21 It is the intent of the Legislature by the passage of this Act
22 to provide for the organization of the state courts in an orderly
23 manner so that the same will be completed on or before January 3,
24 1962 and so that during the intervening period advantage may be
25 taken of the district and appellate structure referred to in
26 Public Law 508, 85th Congress. To effect this intention the
27 state courts shall be organized in the following manner:

28 (1) The Judicial Council shall, in cooperation with
29 and through the facilities of the Legislative Council, institute
studies and make reports and recommendations with regard to the

1 facilities needed for the establishment of the supreme and superior
2 courts of the state. Such studies and reports shall include but
3 not be limited to necessary courtroom facilities and the location
4 thereof; the number and nature of court attaches and personnel
5 and the estimated salary requirements of each position; recommend-
6 ed rules governing practice and procedure in civil and criminal
7 cases; an estimated annual budget of the costs of operating the
8 proposed supreme and superior court system and an estimate of the
9 capital outlay required for physical facilities such as courtrooms,
10 furnishings and libraries; and such additional information with
11 regard to the administration of justice through the supreme and
12 superior court system as may be required to fully inform the
13 Legislature upon the subject.

14 (2) Upon the completion of the studies and reports
15 provided in subdivision (1) hereof, copies shall be forthwith
16 transmitted to the Governor and to the Legislature. Within thirty
17 (30) days thereafter the Judicial Council shall meet and submit
18 to the Governor the names of the persons nominated as the first
19 justices of the supreme court.

20 (3) Upon the appointment of the first supreme court
21 justices, the supreme court shall, as soon as may be practical,
22 consider the reports and studies of the Judicial Council and there-
23 after make and promulgate such rules governing the administration
24 of courts and the practice and procedure in civil and criminal
25 cases as the court may deem appropriate. When the court has adopt-
26 ed such rules governing causes and procedure of the supreme and
27 superior courts, the chief justice shall so advise the Judicial
28 Council and within thirty (30) days thereafter the Judicial
29 Council shall meet and submit to the Governor the names of the

1 persons nominated for some or all of the superior court judges.
2 The Judicial Council may submit the names of all persons nominated
3 as superior court judges for all districts at this time or may
4 submit the names of persons nominated in less than all of the
5 judicial districts or less than all judges provided for in a
6 district in such manner as will provide a gradual series of appoint-
7 ments consistent with the availability of physical facilities and
8 court personnel.

9 (4) Notwithstanding the provisions of subsections (1),
10 (2) and (3) of this section, in the event that either: a court
11 of competent jurisdiction, by final judgment, declares that the
12 District Court of the State of Alaska lacks jurisdiction to de-
13 termine causes arising under the laws of the state, notwithstand-
14 ing the provisions of Public Law 508, 85th Congress; or the
15 President of the United States, by executive order, terminates
16 the jurisdiction of the District Court of the State of Alaska,
17 the Judicial Council shall forthwith meet and submit to the
18 Governor the names of the persons nominated as justices or
19 judges of all of the supreme and superior courts of the state and
20 in any event shall submit all of said names prior to January 3,
21 1962.

22 Sec. 33. SEVERABILITY. The fact that any section, subsec-
23 tion, sentence, clause, or phrase of this Act is declared invalid
24 for any reason shall not affect the remaining portion of this Act.

25 Sec. 34. EFFECTIVE DATE. This Act shall take effect upon
26 its passage and approval or upon becoming law without such approval.
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29