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Referred: Judiciary and  
Finance

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STIMSON AND STURGULEWSKI

1 IN THE SENATE

2 SENATE BILL NO. 104

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the court of appeals; and pro-  
7 viding for an effective date."

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

9 \* Section 1. AS 22 is amended by adding a new chapter to read:

10 CHAPTER 07. THE COURT OF APPEALS.

11 Sec. 22.07.010. ESTABLISHMENT. There is established the court of  
12 appeals, consisting of three judges.

13 Sec. 22.07.020. JURISDICTION. (a) The court of appeals has  
14 appellate jurisdiction in actions and proceedings commenced in the  
15 superior court involving:

16 (1) criminal prosecution;  
17 (2) post-conviction relief;  
18 (3) waiver of children's court jurisdiction over a minor  
19 under AS 47.10;

20 (4) extradition;  
21 (5) habeas corpus;  
22 (6) revocation of probation or parole;  
23 (7) bail; and  
24 (8) appeal to the superior court from a decision of an  
25 administrative agency.

26 (b) The court of appeals has appellate jurisdiction in all actions  
27 and proceedings commenced in the district court and may, in its discre-  
28 tion, remand a district court matter to the superior court for a trial  
29 de novo in whole or in part.

1 (c) The court of appeals may issue injunctions, writs and all  
2 other process necessary for the complete exercise of its jurisdiction.

3 (d) The court of appeals has jurisdiction to hear appeals of  
4 sentences of imprisonment imposed by the superior court or the district  
5 court on the grounds that the sentence is excessive or too lenient and,  
6 in the exercise of this jurisdiction, may modify the sentence as pro-  
7 vided by law and the state constitution.

8 (e) An appeal to the court of appeals is a matter of right in all  
9 actions and proceedings within its jurisdiction, except that

10 (1) there is no right of appeal to the court of appeals in a  
11 case for which direct review by the supreme court has been provided by  
12 rule; and

13 (2) the state has no right of appeal in criminal cases except  
14 to test the sufficiency of the indictment or information or to appeal a  
15 sentence on the ground it is too lenient under (d) of this section.

16 Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the  
17 supreme court for review of a final decision of the court of appeals in  
18 accordance with AS 22.05.010 and rules adopted by the supreme court. In  
19 this section, "final decision" means a decision or order other than a  
20 dismissal by consent of all parties that closes a matter in the court of  
21 appeals.

22 Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of  
23 appeals shall be a citizen of the United States and of the state, a  
24 resident of the state for three years immediately preceding his appoint-  
25 ment, have been engaged for not less than eight years immediately pre-  
26 ceding his appointment in the active practice of law, and at the time of  
27 appointment be licensed to practice law in the state. For purposes of  
28 this section, the active practice of law shall be the same as defined  
29 for the justices of the supreme court in AS 22.05.070.

1           Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of  
2 appeals, upon entering office, shall take and subscribe to an oath of  
3 office required of all officers under the constitution and such further  
4 oath or affirmation as may be prescribed by law.

5           Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of  
6 appeals is subject to approval or rejection as provided in the Alaska  
7 Election Code (AS 15). The judicial council shall conduct an evaluation  
8 of each judge before his retention election and shall provide to the  
9 public information about the judge and may provide a recommendation  
10 regarding his retention or rejection. The information and any recommen-  
11 dation shall be made public at least 30 days before the election. The  
12 judicial council shall also provide the information and any recommenda-  
13 tion to the office of the lieutenant governor in time for publication in  
14 the election pamphlet under AS 15.57.025. If a majority of those voting  
15 on the question rejects the candidacy of a judge, he may not for a  
16 period of four years thereafter be appointed to fill a vacancy in the  
17 supreme court, the court of appeals, or the superior court of the state.

18           Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy  
19 or appoint a successor to fill an impending vacancy in the office of  
20 judge of the court of appeals within 45 days after receiving nominations  
21 from the judicial council, by appointing one of two or more persons  
22 nominated by the council for each actual or impending vacancy. An  
23 appointment to fill an impending vacancy becomes effective upon the  
24 actual occurrence of the vacancy.

25           (b) The office of a judge of the court of appeals becomes vacant  
26 90 days after the election at which he is rejected by a majority of  
27 those voting on the question or for which he fails to file his declara-  
28 tion of candidacy to succeed himself. Upon the occurrence of (1) an  
29 actual vacancy; (2) the certification of rejection following an elec-

1 tion; or (3) the failure of a judge to file a declaration of candidacy  
2 to succeed himself, the judicial council shall meet within 45 days and  
3 submit to the governor the names of two or more persons qualified for  
4 the judicial office; however, the 45-day period may be extended by the  
5 judicial council with the concurrence of the supreme court. In the  
6 event of an impending vacancy other than by reason of rejection or  
7 failure to file a declaration of candidacy, the judicial council may  
8 meet at any time within the 90-day period immediately preceding the  
9 effective date of the vacancy and submit to the governor the names of  
10 two or more persons qualified for the judicial office.

11 Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals  
12 while holding office may not practice law, or engage in the conduct of  
13 any other profession, vocation or business for profit or compensation,  
14 which conduct would interfere with his performance of his judicial  
15 duties, nor may he hold office in a political party, or hold any other  
16 office or position of profit under the United States, the state or its  
17 political subdivisions. A judge of the court of appeals filing for  
18 another elective public office forfeits his judicial position.

19 Sec. 22.07.090. COMPENSATION. (a) Each judge of the court of  
20 appeals is entitled to receive annual compensation prescribed in accor-  
21 dance with AS 39.23. The compensation of a judge may not be diminished  
22 during his term of office, unless by general law applying to all  
23 salaried officers of the state.

24 (b) A salary warrant may not be issued to a judge of the court of  
25 appeals until he has filed with the state officer designated to issue  
26 salary warrants an affidavit that no matter referred to the judge for  
27 opinion or decision has been incompleated or undecided by him for a  
28 period of more than six months.

29 Sec. 22.07.100. PROCESS. Process of the court of appeals shall be

1 in the name of the State of Alaska, signed by the clerk of the court or  
2 his deputy, dated when issued, sealed with the seal of court, and made  
3 returnable according to rule prescribed by the supreme court.

4 \* Sec. 2. AS 22.05.010 is repealed and re-enacted to read:

5 Sec. 22.05.010. JURISDICTION. (a) The supreme court has final  
6 appellate jurisdiction in all actions and proceedings.

7 (b) Appeal to the supreme court is a matter of right only in those  
8 actions and proceedings from which there is no right of appeal to the  
9 court of appeals under AS 22.07.020.

10 (c) The supreme court may in its discretion review a final deci-  
11 sion of the court of appeals on its own motion or on application of a  
12 party under AS 22.07.030.

13 (d) The supreme court may issue injunctions, writs and all other  
14 process necessary to the complete exercise of its jurisdiction.

15 \* Sec. 3. AS 22.05 is amended by adding a new section to read:

16 Sec. 22.05.015. TRANSFER OF APPELLATE CASES. (a) The supreme  
17 court may transfer to the court of appeals for decision a case pending  
18 before the supreme court if the case is within the jurisdiction of the  
19 court of appeals.

20 (b) The supreme court may take jurisdiction of a case pending  
21 before the court of appeals if the supreme court determines that

22 (1) the case involves a significant question of law under the  
23 Constitution of the United States or of the state or an issue of sub-  
24 stantial public interest that should be determined by the supreme court;  
25 or

26 (2) the transfer will further the efficient administration of  
27 justice.

28 (c) The supreme court may provide by rule that review of an appeal  
29 to the superior court from an administrative agency be by the supreme

1 court rather than by the court of appeals under AS 22.07.020(8).

2 (d) A case filed in the supreme court or in the court of appeals  
3 may not be dismissed by one court on the sole ground that it is within  
4 the jurisdiction of the other court. The case shall be transferred to  
5 the proper court.

6 \* Sec. 4. AS 22.05.060 is amended to read:

7 Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is  
8 a vignette of the official flag of the state with the words "Seal of the  
9 Supreme Court of the State of Alaska" surrounding the vignette. The  
10 supreme court shall prescribe by rule the seals of court for the court  
11 of appeals and for the superior and district courts.

12 \* Sec. 5. AS 22.05.100 is amended to read:

13 Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice  
14 is subject to approval or rejection as provided in the Alaska Election  
15 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-  
16 tion of each justice before his retention election and shall provide to  
17 the public information about that justice and may provide a recommenda-  
18 tion regarding his retention or rejection. Such information and any  
19 recommendation shall be made public at least 30 days before the reten-  
20 tion election. The judicial council shall also provide such information  
21 and any recommendation to the office of the lieutenant governor in time  
22 for publication in the election pamphlet under AS 15.57.025. If a  
23 majority of those voting on the question rejects his candidacy, he shall  
24 not be appointed to fill any vacancy in the supreme court, court of  
25 appeals or superior courts of the state for a period of four years  
26 thereafter.

27 \* Sec. 6. AS 22.10.020(a) is amended to read:

28 (a) The superior court is the trial court of general jurisdiction,  
29 with original jurisdiction in all civil and criminal matters, including

1 but not limited to probate and guardianship of minors and incompetents.  
2 The jurisdiction of the superior court extends over the whole of the  
3 state. The superior court and its judges may issue injunctions, writs  
4 of review, mandamus, prohibition, habeas corpus and all other writs  
5 necessary or proper to the complete exercise of its jurisdiction. A  
6 writ of habeas corpus may be made returnable before any judge of the  
7 superior court. The superior court has jurisdiction in all matters  
8 appealed to it from an [A SUBORDINATE COURT, OR] administrative agency  
9 when appeal is provided by law. Appeals are a matter of right [, BUT NO  
10 APPEAL FROM A SUBORDINATE COURT MAY BE TAKEN BY THE DEFENDANT IN A  
11 CRIMINAL CASE AFTER A PLEA OF GUILTY, EXCEPT ON THE GROUND THAT THE  
12 SENTENCE WAS EXCESSIVE, AS FURTHER PROVIDED BY THIS SECTION. NO APPEAL  
13 MAY BE TAKEN BY THE STATE, EXCEPT TO TEST THE SUFFICIENCY OF AN INDICT-  
14 MENT OR INFORMATION. AN APPEAL TO THE SUPERIOR COURT MAY BE TAKEN ON  
15 THE GROUND THAT A SENTENCE OF IMPRISONMENT OF 180 DAYS OR MORE WAS  
16 EXCESSIVE AND THE SUPERIOR COURT IN THE EXERCISE OF THIS JURISDICTION  
17 HAS THE POWER TO MODIFY THE SENTENCE APPEALED FROM UPWARD OR DOWNWARD].  
18 The hearings on appeal from a final order or judgment of an [A SUBOR-  
19 DINATE COURT OR] administrative agency shall be on the record unless the  
20 superior court, in its discretion, grants a trial de novo, in whole or  
21 in part.

22 \* Sec. 7. AS 22.10.150 is amended to read:

23 Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge  
24 is subject to approval or rejection as provided in the Alaska Election  
25 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-  
26 tion of each judge before his retention election and shall provide to  
27 the public information about the judge and may provide a recommendation  
28 regarding his retention or rejection. Such information and any recom-  
29 mendation shall be made public at least 30 days before the retention

1 election. The judicial council shall also provide such information and  
2 any recommendation to the office of the lieutenant governor in time for  
3 publication in the election pamphlet under AS 15.57.025. If a majority  
4 of those voting on the question rejects his candidacy, he shall not for  
5 a period of four years thereafter be appointed to fill any vacancy in  
6 the supreme court, court of appeals or superior courts of the state.

7 \* Sec. 8. AS 22.15.195 is amended to read:

8 Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge  
9 is subject to approval or rejection as provided in the Alaska Election  
10 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-  
11 tion of each judge before his retention election and shall provide to  
12 the public information about the judge and may provide a recommendation  
13 regarding his retention or rejection. Such information and the recom-  
14 mendation shall be made public at least 30 days before the election.  
15 The judicial council shall also provide such information and any recom-  
16 mendation to the office of the lieutenant governor in time for publica-  
17 tion in the election pamphlet under AS 15.57.025. If a majority of those  
18 voting on the question rejects his candidacy, he shall not for a period  
19 of four years thereafter be appointed to fill any vacancy in the supreme  
20 court, court of appeals, superior courts or district courts of the  
21 state.

22 \* Sec. 9. AS 22.15.240 is amended to read:

23 Sec. 22.15.240. APPEAL. (a) Either party may appeal a judgment  
24 of the district court in a civil action to the court of appeals [SU-  
25 PERIOR COURT] when the sum in controversy is not less than \$50, or for  
26 the recovery of personal property of the value of not less than \$50  
27 exclusive of costs in either case, except when the sum is given by  
28 confession or for want of an answer.

29 (b) The defendant may appeal a judgment of conviction given in the

1 district court in a criminal action to the court of appeals [SUPERIOR  
2 COURT]. When the judgment is given on a plea of guilty, no appeal may  
3 be taken by the defendant except on the ground that a sentence of im-  
4 prisonment of 45 [180] days or more was excessive; however, the supreme  
5 court by rule may further provide for review of a judgment given on a  
6 plea of guilty. The state has no right of appeal in criminal actions  
7 for which judgment is given in the district courts, except to test the  
8 sufficiency of the information.

9 (c) An appeal from the district court shall be taken within 30  
10 days from the date of entry of the judgment. All appeals shall be on  
11 the record [UNLESS THE SUPERIOR COURT, IN ITS DISCRETION, GRANTS A TRIAL  
12 DE NOVO, IN WHOLE OR IN PART].

13 (d) The supreme court shall prescribe further rules for the pro-  
14 cedure for appeals from district courts.

15 \* Sec. 10. AS 22.20.010 is amended to read:

16 Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial  
17 officer" means a supreme court justice, including the chief justice,  
18 a judge of the court of appeals, a judge of the superior court, a dis-  
19 trict judge and a magistrate.

20 \* Sec. 11. AS 22.20.110 is amended to read:

21 Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS,  
22 THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme  
23 court, the commissioner shall serve and execute all process issued by  
24 the court of appeals, the superior court and the district courts, attend  
25 to and wait upon grand and petit juries, maintain order, attend the  
26 sessions of the courts, and exercise the power and perform the duties  
27 concerning all matters within the jurisdiction of the courts as may be  
28 assigned to him. The commissioner is the executive officer of the court  
29 of appeals, the superior court and district courts.

- 1 \* Sec. 12. AS 22.25.010(g) is amended to read:  
2 (g) The word "justice" means a supreme court justice, and the word  
3 "judge," unless the context clearly indicates otherwise, means a judge  
4 of the court of appeals, a superior court judge or district court judge.
- 5 \* Sec. 13. AS 22.30.080(2) is amended to read:  
6 (2) "judge" means a justice of the supreme court, a judge of  
7 the court of appeals, a judge of the superior court, or a judge of the  
8 district court who is the subject of an investigation or proceeding  
9 under sec. 10, art. IV, Constitution of the State of Alaska and this  
10 chapter.
- 11 \* Sec. 14. AS 11.56.900(2) is amended to read:  
12 (2) "judicial officer" means a supreme court justice, in-  
13 cluding the chief justice, a judge of the court of appeals, a judge of  
14 the superior court, a district court judge, or a magistrate;
- 15 \* Sec. 15. AS 15.15.030(10) is repealed and re-enacted to read:  
16 (10) A separate nonpartisan judicial ballot shall be desig-  
17 nated for each judicial district in which a justice or judge is seeking  
18 to succeed himself. The ballot shall be divided into four parts and  
19 each part shall bear a heading indicating the court to which the candi-  
20 date is seeking approval. Within each part the question of whether the  
21 justice or judge shall be approved or rejected shall be set out in  
22 substantially the following manner: (A) "Shall . . . . . be re-  
23 tained as justice of the supreme court for 10 years?"; (B) "Shall . . .  
24 . . . . . be retained as judge of the court of appeals for eight years?";  
25 (C) "Shall . . . . . be retained as judge of the superior court for  
26 six years?"; or (D) "Shall . . . . . be retained as judge of the  
27 district court for four years?" Provision shall be made for marking  
28 each question "Yes" or "No".
- 29 \* Sec. 16. AS 15.35 is amended by adding new sections to read:

1           Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF  
2 APPEALS. Each judge of the court of appeals shall be subject to  
3 approval or rejection at the first general election held more than three  
4 years after his appointment. If approved, he shall thereafter be sub-  
5 ject to approval or rejection in a like manner every eighth year.

6           Sec. 15.35.150. FILING DECLARATION BY JUDGE OF THE COURT OF  
7 APPEALS. Each judge of the court of appeals seeking to succeed himself  
8 in office shall file with the lieutenant governor a declaration of  
9 candidacy not less than 90 days before the date of the general election  
10 at which approval or rejection is requisite.

11           Sec. 15.35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS.  
12 At the time the declaration is filed, each candidate shall pay a filing  
13 fee to the lieutenant governor. The filing fee for a candidate for the  
14 court of appeals is \$100.

15           Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON  
16 BALLOT. The lieutenant governor shall place the name of a judge of the  
17 court of appeals who has properly filed a declaration of candidacy on  
18 the judicial ballot in each judicial district of the state for the  
19 general election at which approval is sought.

20 \* Sec. 17. AS 15.57.025 is amended to read:

21           Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL  
22 OFFICERS. No later than 60 days before the applicable state election,  
23 the judicial council shall file with the lieutenant governor a statement  
24 including information about each supreme court justice, court of appeals  
25 judge, superior court judge, and district court judge who will be sub-  
26 ject to a retention election, following the evaluation of each such  
27 justice or judge conducted by the judicial council according to law.  
28 Each such statement may not exceed 300 words.

29 \* Sec. 18. AS 15.57.040(2) is amended to read:

1 (2) judicial officer other than supreme court justice or  
2 court of appeals judge, \$50 each.

3 \* Sec. 19. AS 24.55.330(2) is amended to read:

4 (2) "agency" includes a department, office, institution,  
5 corporation, authority, organization, commission, committee, council or  
6 board of a municipality or in the executive, legislative or judicial  
7 branches of the state government, and a department, office, institution,  
8 corporation, authority, organization, commission, committee, council or  
9 board of a municipality or of the state government independent of the  
10 executive, legislative and judicial branches; it also includes an  
11 officer, employee or member of an "agency" acting or purporting to act  
12 in the exercise of his official duties, but does not include the gover-  
13 nor, lieutenant governor, a member of the legislature, justice of the  
14 supreme court, judge of the court of appeals, a superior court judge,  
15 [OR] district court judge, magistrate, member of a city council or  
16 borough assembly, elected city or borough mayor, or a member of an  
17 elected school board;

18 \* Sec. 20. AS 39.20.310(1) is amended to read:

19 (1) members of the state legislature, the governor, the  
20 lieutenant governor, and justices and judges of the supreme and superior  
21 courts and of the court of appeals, but nothing in AS 39.20.220 -  
22 39.20.330 may be construed to diminish the salaries fixed by law for  
23 these officers by reason of absence from duty on account of illness or  
24 otherwise;

25 \* Sec. 21. AS 39.23.130(2) is amended to read:

26 (2) "judiciary" means justices of the supreme court and  
27 judges of the court of appeals, the superior court and the district  
28 court [THE SUPERIOR AND DISTRICT COURTS].

29 \* Sec. 22. AS 39.35.680(21)(C)(vi) is amended to read:

1 (vi) justices of the supreme court or judges of the  
2 court of appeals or of the superior or district courts of  
3 Alaska;

4 \* Sec. 23. AS 12.55.120(a) is amended to read:

5 (a) A sentence of imprisonment lawfully imposed by the superior  
6 court for a term or for aggregate terms of 45 days or more [EXCEEDING  
7 ONE YEAR] may be appealed to the court of appeals [SUPREME COURT] by the  
8 defendant on the ground that the sentence is excessive. By appealing a  
9 sentence under this section, the defendant waives the right to plead  
10 that by a revision of the sentence resulting from the appeal he has been  
11 twice placed in jeopardy for the same offense.

12 \* Sec. 24. AS 12.55.120(b) is amended to read:

13 (b) A sentence of imprisonment lawfully imposed by the superior  
14 court may be appealed to the court of appeals [SUPREME COURT] by the  
15 state on the ground that the sentence is too lenient; however, when a  
16 sentence is appealed by the state and the defendant has not appealed the  
17 sentence, the court is not authorized to increase the sentence but may  
18 express its approval or disapproval of the sentence and its reasons in a  
19 written opinion.

20 \* Sec. 25. A judge of the court of appeals is entitled to receive annual  
21 compensation equal to 95 per cent of the annual compensation of a supreme  
22 court justice, payable in equal monthly installments, from the date upon  
23 which he takes office until superseded by payment of compensation resulting  
24 from the first salary recommendations made under AS 39.23 for judges of the  
25 court of appeals.

26 \* Sec. 26. Notwithstanding the effective date of this Act, operations of  
27 the court of appeals shall commence on a date determined by the supreme court  
28 after all judges of the court of appeals have taken office.

29 \* Sec. 27. The superior court has concurrent appellate jurisdiction with

1 the court of appeals in actions and proceedings commenced in the district  
2 court and filed in the superior court before the date on which operations of  
3 the court of appeals commence. The supreme court may transfer to the court  
4 of appeals an appellate matter involving an action or proceeding commenced in  
5 the district court which is pending in the superior court on the date on  
6 which operations of the court of appeals commence, including a matter filed  
7 before the effective date of this Act. An appellate matter not so trans-  
8 ferred shall be decided by the superior court. Before commencement of opera-  
9 tions in the court of appeals, a decision of the superior court under this  
10 section may be appealed to the supreme court and thereafter to the court of  
11 appeals.

12 \* Sec. 28. The supreme court may transfer to the court of appeals any  
13 matter within the jurisdiction of the court of appeals which is pending in  
14 the supreme court on the date on which operations of the court of appeals  
15 commence, including matters filed in the supreme court before the effective  
16 date of this Act.

17 \* Sec. 29. It is the intent of the legislature that the court of appeals  
18 commence operations as soon as possible after the effective date of this Act.  
19 The administrative director of courts shall immediately take necessary action  
20 to provide suitable facilities for the court of appeals. When advised by the  
21 supreme court, the judicial council shall meet and submit nominations to the  
22 governor for all initial vacancies for judge of the court of appeals.

23 \* Sec. 30. Section 14 of this Act takes effect January 1, 1980. The  
24 remainder of this Act takes effect July 1, 1979.

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