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Referred: Judiciary and
Finance

BY ZIEGLER, BRADLEY, MELAND, RODEY,
STIMSON AND STURGULEWSKI

1 IN THE SENATE

2 SENATE BILL NO. 104 am

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
thereafter.

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

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

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 39.50.200(2) is amended to read:

5 (2) "judicial officer" means a person appointed as a justice
6 to the supreme court or as a judge to the court of appeals, superior
7 court, district court, or magistrate court.

8 * Sec. 24. AS 12.55.120(a) is amended to read:

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

16 * Sec. 25. AS 12.55.120(b) is amended to read:

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

24 * Sec. 26. A judge of the court of appeals is entitled to receive annual
25 compensation equal to 95 per cent of the annual compensation of a supreme
26 court justice, payable in equal monthly installments, from the date upon
27 which he takes office until superseded by payment of compensation resulting
28 from the first salary recommendations made under AS 39.23 for judges of the
29 court of appeals.

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

4 * Sec. 28. The superior court has concurrent appellate jurisdiction with
5 the court of appeals in actions and proceedings commenced in the district
6 court and filed in the superior court before the date on which operations of
7 the court of appeals commence. The supreme court may transfer to the court
8 of appeals an appellate matter involving an action or proceeding commenced in
9 the district court which is pending in the superior court on the date on
10 which operations of the court of appeals commence, including a matter filed
11 before the effective date of this Act. An appellate matter not so trans-
12 ferred shall be decided by the superior court. Before commencement of opera-
13 tions in the court of appeals, a decision of the superior court under this
14 section may be appealed to the supreme court and thereafter to the court of
15 appeals.

16 * Sec. 29. The supreme court may transfer to the court of appeals any
17 matter within the jurisdiction of the court of appeals which is pending in
18 the supreme court on the date on which operations of the court of appeals
19 commence, including matters filed in the supreme court before the effective
20 date of this Act.

21 * Sec. 30. It is the intent of the legislature that the court of appeals
22 commence operations as soon as possible after the effective date of this Act.
23 The administrative director of courts shall immediately take necessary action
24 to provide suitable facilities for the court of appeals. When advised by the
25 supreme court, the judicial council shall meet and submit nominations to the
26 governor for all initial vacancies for judge of the court of appeals.

27 * Sec. 31. Section 14 of this Act takes effect January 1, 1980. The
28 remainder of this Act takes effect July 1, 1979.

29