

Original sponsors: Ziegler, Bradley,  
Meland, et al

Offered: 2/6/80  
Referred: Finance

1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
2 HOUSE CS FOR SENATE BILL NO. 104 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the judiciary; establishing a court  
7 of appeals; amending the jurisdiction of the supreme  
8 court, the superior court, and the district court;  
9 clarifying and amending the sentence appeal and other  
10 appellate jurisdiction of the superior court; changing  
11 the qualifications of justices and judges; providing  
12 that justices and judges may serve as delegates to  
13 constitutional conventions; amending the time period in  
14 which the judicial council is to provide information to  
15 the public concerning judicial officers standing for  
16 retention election; changing Rule 21, Rules of Appel-  
17 late Procedure and Rule 7, District Court Criminal  
18 Rules; and providing for an effective date."

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

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

21 CHAPTER 07. THE COURT OF APPEALS.

22 Sec. 22.07.010. ESTABLISHMENT. There is established the court of  
23 appeals, consisting of three judges. The court of appeals is a court of  
24 record.

25 Sec. 22.07.020. JURISDICTION. (a) The court of appeals has  
26 appellate jurisdiction in actions and proceedings commenced in the  
27 superior court involving:

- 28 (1) criminal prosecution;  
29 (2) post-conviction relief;

1 (3) children's court matters under AS 47.10.010(a)(1) includ-  
2 ing waiver of children's court jurisdiction over a minor under AS 47.10;  
3 (4) extradition;  
4 (5) habeas corpus;  
5 (6) probation and parole; and  
6 (7) bail.

7 (b) The court of appeals has jurisdiction to hear appeals of  
8 sentences of imprisonment imposed by the superior court on the grounds  
9 that the sentence is excessive or too lenient and, in the exercise of  
10 this jurisdiction, may modify the sentence as provided by law and the  
11 state constitution.

12 (c) An appeal to the court of appeals is a matter of right in all  
13 actions and proceedings within its jurisdiction, except that the state  
14 has no right of appeal in criminal cases except to test the sufficiency  
15 of the indictment or information or to appeal a sentence on the ground  
16 it is too lenient.

17 (d) The court of appeals may in its discretion (1) review a final  
18 decision of the superior court on an appeal from a district court in an  
19 action or proceeding involving criminal prosecution, post-conviction  
20 relief, extradition, probation and parole, habeas corpus or bail; (2)  
21 review the final decision of the superior court on appeal of a sentence  
22 imposed by the district court. In this subsection "final decision"  
23 means a decision or order, other than a dismissal by consent of all  
24 parties, that closes a matter in the superior court.

25 (e) The court of appeals may issue injunctions, writs and all  
26 other process necessary for the complete exercise of its jurisdiction.

27 (f) A final decision of the court of appeals is binding on the  
28 superior court and on the district court unless superseded by a decision  
29 of the supreme court.

1                   Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the  
2 supreme court for review of a final decision of the court of appeals in  
3 accordance with AS 22.05.010 and rules adopted by the supreme court.  
4 Review is in the discretion of the supreme court as set out in AS 22.-  
5 05.010(c). In this section, "final decision" means a decision or order,  
6 other than a dismissal by consent of all parties, that closes a matter  
7 in the court of appeals.

8                   Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of  
9 appeals shall be a citizen of the United States and of the state, a  
10 resident of the state for five years immediately preceding his appoint-  
11 ment, have been engaged for not less than eight years immediately pre-  
12 ceding his appointment in the active practice of law, and at the time of  
13 appointment be licensed to practice law in the state. For purposes of  
14 this section, the active practice of law is the same as defined for the  
15 justices of the supreme court in AS 22.05.070.

16                   Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of  
17 appeals, upon entering office, shall take and subscribe to the oath or  
18 affirmation of office required of all officers under the constitution.

19                   Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of  
20 appeals is subject to approval or rejection as provided in the Alaska  
21 Election Code (AS 15). The judicial council shall conduct an evaluation  
22 of each judge before his retention election and shall provide informa-  
23 tion to the public about the judge and may provide a recommendation  
24 regarding his retention or rejection. The information and any recommen-  
25 dation shall be made public at least 60 days before the election. The  
26 judicial council shall also provide the information and any recommenda-  
27 tion to the office of the lieutenant governor in time for publication in  
28 the election pamphlet as required by AS 15.57.025. If a majority of  
29 those voting on the question rejects the candidacy of a judge, he may

1 not for a period of four years thereafter be appointed to fill a vacancy  
2 in the supreme court, the court of appeals, the superior court, or the  
3 district court of the state.

4 Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy  
5 or appoint a successor to fill an impending vacancy in the office of  
6 judge of the court of appeals within 45 days after receiving nominations  
7 from the judicial council, by appointing one of two or more persons  
8 nominated by the council for each actual or impending vacancy. An  
9 appointment to fill an impending vacancy becomes effective upon the  
10 actual occurrence of the vacancy.

11 (b) The office of a judge of the court of appeals becomes vacant  
12 90 days after the election at which he is rejected by a majority of  
13 those voting on the question or for which he fails to file his declara-  
14 tion of candidacy to succeed himself. Upon the occurrence of (1) an  
15 actual vacancy; (2) the certification of rejection following an elec-  
16 tion; or (3) the failure of a judge to file a declaration of candidacy  
17 to succeed himself, the judicial council shall meet within 45 days and  
18 submit to the governor the names of two or more persons qualified for  
19 the judicial office; however, the 45-day period may be extended by the  
20 judicial council with the concurrence of the supreme court. In the  
21 event of an impending vacancy other than by reason of rejection or  
22 failure to file a declaration of candidacy, the judicial council may  
23 meet at any time within the 90-day period immediately preceding the  
24 effective date of the vacancy and submit to the governor the names of  
25 two or more persons qualified for the judicial office.

26 Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals  
27 while holding office may not practice law, or engage in the conduct of  
28 any other profession, vocation or business for profit or compensation,  
29 which conduct would interfere with his performance of his judicial

1 duties, nor may he hold office in a political party, or hold any other  
2 office or position of profit under the United States, the state or its  
3 political subdivisions. A judge of the court of appeals filing for  
4 another elective public office other than delegate to a constitutional  
5 convention of this state or the United States forfeits his judicial  
6 position.

7 Sec. 22.07.090. COMPENSATION. (a) The monthly salary of a judge  
8 of the court of appeals is equal to Step E, Range 29 of the salary  
9 schedule in AS 39.27.011(a) for Juneau, Alaska. The compensation of a  
10 judge may not be diminished during his term of office, unless by general  
11 law applying to all salaried officers of the state.

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

17 Sec. 22.07.100. PROCESS. Process of the court of appeals shall be  
18 in the name of the State of Alaska, signed by the clerk of the court or  
19 his deputy, dated when issued, sealed with the seal of court, and made  
20 returnable according to rule prescribed by the supreme court.

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

22 Sec. 22.05.010. JURISDICTION. (a) The supreme court has final  
23 appellate jurisdiction in all actions and proceedings. However, a party  
24 has only one appeal as a matter of right from an action or proceeding  
25 commenced in either the district court or the superior court.

26 (b) Appeal to the supreme court is a matter of right only in those  
27 actions and proceedings from which there is no right of appeal to the  
28 court of appeals under AS 22.07.020 or to the superior court under  
29 AS 22.10.020 or AS 22.15.240.

1 (c) A decision of the superior court on an appeal from an adminis-  
2 trative agency decision may be appealed to the supreme court as a matter  
3 of right.

4 (d) The supreme court may in its discretion review a final deci-  
5 sion of the court of appeals on application of a party under AS 22.07.-  
6 030. The supreme court may in its discretion review a final decision of  
7 the superior court on an appeal of a civil case commenced in the dis-  
8 trict court. In this subsection "final decision" means a decision or  
9 order, other than a dismissal by consent of all parties, that closes a  
10 matter in the court of appeals.

11 (e) The supreme court may issue injunctions, writs and all other  
12 process necessary to the complete exercise of its jurisdiction.

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

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

18 (b) The supreme court may take jurisdiction of a case pending  
19 before the court of appeals if the court of appeals certifies to the  
20 supreme court that the case involves a significant question of law under  
21 the Consitution of the United States or under the constitution of the  
22 state or involves an issue of substantial public interest that should be  
23 determined by the supreme court.

24 (c) A case filed in the supreme court or in the court of appeals  
25 may not be dismissed by one court on the ground that it is within the  
26 jurisdiction of the other court. The case shall be transferred to the  
27 proper court.

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

29 Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is

1 a vignette of the official flag of the state with the words "Seal of the  
2 Supreme Court of the State of Alaska" surrounding the vignette. The  
3 supreme court shall prescribe by rule the seals of court for the court  
4 of appeals and for the superior and district courts.

5 \* Sec. 5. AS 22.05.070 is amended to read:

6 Sec. 22.05.070. QUALIFICATIONS OF JUSTICES. A justice of the  
7 supreme court shall be a citizen of the United States and of the state,  
8 a resident of the state for five [THREE] years immediately preceding his  
9 appointment, have been engaged for not less than eight years immediately  
10 preceding his appointment in the active practice of law, and at the time  
11 of appointment be licensed to practice law in the state. The active  
12 practice of law includes

13 (1) sitting as a judge in a state or territorial court;

14 (2) being actually engaged in advising and representing  
15 clients in matters of law;

16 (3) rendering legal services to an agency, branch, or depart-  
17 ment of a civil government within the United States or a state or terri-  
18 tory of the United States, in an elective, appointive or employed capac-  
19 ity;

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

22 \* Sec. 6. AS 22.05.100 is amended to read:

23 Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice  
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 justice before his retention election and shall provide to  
27 the public information about that justice and may provide a recommenda-  
28 tion regarding his retention or rejection. Such information and any  
29 recommendation shall be made public at least 60 [30] days before the

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

8 \* Sec. 7. AS 22.05.130 is amended to read:

9 Sec. 22.05.130. RESTRICTIONS. A supreme court justice while  
10 holding office may not practice law, nor engage in the conduct of any  
11 other profession, vocation or business for profit or compensation, which  
12 conduct would interfere with his performance of his judicial duties, nor  
13 may he hold office in a political party, or hold any other office or  
14 position of profit under the United States, the state [,] or its poli-  
15 tical subdivisions. A supreme court justice filing for another elective  
16 public office other than delegate to a constitutional convention of  
17 this state or the United States forfeits his judicial position.

18 \* Sec. 8. AS 22.10.020(a) is amended to read:

19 (a) The superior court is the trial court of general jurisdiction,  
20 with original jurisdiction in all civil and criminal matters, including  
21 but not limited to probate and guardianship of minors and incompetents.  
22 The jurisdiction of the superior court extends over the whole of the  
23 state. The superior court and its judges may issue injunctions, writs  
24 of review, mandamus, prohibition, habeas corpus and all other writs  
25 necessary or proper to the complete exercise of its jurisdiction. A  
26 writ of habeas corpus may be made returnable before any judge of the  
27 superior court. The superior court has jurisdiction in all matters  
28 appealed to it from a subordinate court, or administrative agency when  
29 appeal is provided by law. Appeals are a matter of right, but no appeal

1 from a subordinate court may be taken by the defendant in a criminal  
2 case after a plea of guilty, except on the ground that the sentence was  
3 excessive, as further provided by this section. The state has no right  
4 to appeal in criminal cases [NO APPEAL MAY BE TAKEN BY THE STATE],  
5 except to test the sufficiency of an indictment or information or to  
6 appeal a sentence on the ground it is too lenient. An appeal to the  
7 superior court may be taken on the ground that a sentence of impris-  
8 onment of 90 [180] days or more was excessive and the superior court in  
9 the exercise of this jurisdiction has the power to reduce [MODIFY] the  
10 sentence [APPEALED FROM UPWARD OR DOWNWARD]. When a sentence is ap-  
11 pealed by the state on the ground it is too lenient, the court may not  
12 increase the sentence but may express its approval or disapproval of  
13 the sentence and its reasons in a written opinion. The hearings on  
14 appeal from a final order or judgment of a subordinate court or adminis-  
15 trative agency shall be on the record unless the superior court, in its  
16 discretion, grants a trial de novo, in whole or in part.

17 \* Sec. 9. AS 22.10.090 is amended to read:

18 Sec. 22.10.090. QUALIFICATIONS OF JUDGES. A judge of the superior  
19 court shall be a citizen of the United States and of the state, a resi-  
20 dent of the state for five [THREE] years immediately preceding his  
21 appointment, have been engaged for not less than five years immediately  
22 preceding his appointment in the active practice of law, and at the time  
23 of appointment be licensed to practice law in the state. The active  
24 practice of law shall be as defined for justices of the supreme court in  
25 AS 22.05.070.

26 \* Sec. 10. AS 22.10.150 is amended to read:

27 Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge  
28 is subject to approval or rejection as provided in the Alaska Election  
29 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-

tion of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 60 [30] days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, [OR] superior courts, or district courts of the state.

\* Sec. 11. AS 22.10.180 is amended to read:

Sec. 22.10.180. RESTRICTIONS. A superior court judge while holding office may not practice law, nor engage in the conduct of any other profession, vocation or business for profit or compensation, which conduct would interfere with his performance of his judicial duties, nor may he hold office in a political party, or hold any other office or position of profit under the United States, the state or its political subdivisions. A superior court judge filing for another elective public office other than delegate to a constitutional convention of this state or the United States forfeits his judicial position.

\* Sec. 12. AS 22.15.160(a) is amended to read:

(a) A district judge shall be a citizen of the United States and of the state, at least 21 years of age, a resident of the state for at least five years [ONE YEAR] immediately preceding his appointment, and (1) have been engaged in the active practice of law for not less than three years immediately preceding his appointment and at the time of his appointment licensed to practice law in the State of Alaska, or (2)

1 have served for at least seven years as a magistrate in the state. The  
2 supreme court may prescribe additional qualifications.

3 \* Sec. 13. AS 22.15.195 is amended to read:

4 Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge  
5 is subject to approval or rejection as provided in the Alaska Election  
6 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-  
7 tion of each judge before his retention election and shall provide to  
8 the public information about the judge and may provide a recommendation  
9 regarding his retention or rejection. Such information and the recom-  
10 mendation shall be made public at least 60 [30] days before the elec-  
11 tion. The judicial council shall also provide such information and any  
12 recommendation to the office of the lieutenant governor in time for  
13 publication in the election pamphlet under AS 15.57.025. If a majority  
14 of those voting on the question rejects his candidacy, he shall not for  
15 a period of four years thereafter be appointed to fill any vacancy in  
16 the supreme court, court of appeals, superior courts or district courts  
17 of the state.

18 \* Sec. 14. AS 22.15.210(a) is amended to read:

19 (a) A district judge [,] while holding office [,] may not practice  
20 law, nor engage in the conduct of any other profession, vocation or  
21 business for profit or compensation, which conduct would interfere with  
22 his performance of his judicial duties, nor may he hold office in a  
23 political party, or hold any other office or position of profit under  
24 the United States, the state or its political subdivisions, except that,  
25 with the approval of the chief justice of the Alaska Supreme Court, a  
26 [THE] district judge may be appointed deputy clerk of the superior court  
27 and may hold the office of United States magistrate. A district judge  
28 who files for another elective public office other than delegate to a  
29 constitutional convention of this state or the United States forfeits

1 his judicial position.

2 \* Sec. 15. AS 22.15.240 is amended to read:

3 Sec. 22.15.240. APPEAL. (a) Either party may appeal a judgment  
4 of the district court in a civil action to the superior court [WHEN THE  
5 SUM IN CONTROVERSY IS NOT LESS THAN \$50, OR FOR THE RECOVERY OF PERSONAL  
6 PROPERTY OF THE VALUE OF NOT LESS THAN \$50 EXCLUSIVE OF COSTS IN EITHER  
7 CASE, EXCEPT WHEN THE SUM IS GIVEN BY CONFESSION OR FOR WANT OF AN  
8 ANSWER].

9 (b) The defendant may appeal a judgment of conviction given in the  
10 district court in a criminal action to the superior court. When the  
11 judgment is given on a plea of guilty, no appeal may be taken by the  
12 defendant except on the ground that a sentence of imprisonment of 90  
13 [180] days or more was excessive [; HOWEVER, THE SUPREME COURT BY RULE  
14 MAY FURTHER PROVIDE FOR REVIEW OF A JUDGMENT GIVEN ON A PLEA OF GUILTY].  
15 The state has no right of appeal in criminal actions for which judgment  
16 is given in the district courts, except to test the sufficiency of the  
17 information or to appeal a sentence on the ground it is too lenient.  
18 When a sentence is appealed by the state on the ground it is too le-  
19 lenient, the court may not increase the sentence but may express its ap-  
20 proval or disapproval of the sentence and its reasons in a written  
21 opinion.

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

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

28 \* Sec. 16. AS 22.20.010 is amended to read:

29 Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial

1 officer" means a supreme court justice, including the chief justice,  
2 a judge of the court of appeals, a judge of the superior court, a dis-  
3 trict judge and a magistrate.

4 \* Sec. 17. AS 22.20.110 is amended to read:

5 Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS,  
6 THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme  
7 court, the commissioner shall serve and execute all process issued by  
8 the court of appeals, the superior court and the district courts, attend  
9 to and wait upon grand and petit juries, maintain order, attend the  
10 sessions of the courts, and exercise the power and perform the duties  
11 concerning all matters within the jurisdiction of the courts as may be  
12 assigned to him. The commissioner is the executive officer of the court  
13 of appeals, the superior court and district courts.

14 \* Sec. 18. AS 22.25.010(g) is amended to read:

15 (g) The word "justice" means a supreme court justice, and the word  
16 "judge," unless the context clearly indicates otherwise, means a judge  
17 of the court of appeals, a superior court judge or district court judge.

18 \* Sec. 19. AS 22.30.080(2) is amended to read:

19 (2) "judge" means a justice of the supreme court, a judge of  
20 the court of appeals, a judge of the superior court, or a judge of the  
21 district court who is the subject of an investigation or proceeding  
22 under sec. 10, art. IV, Constitution of the State of Alaska and this  
23 chapter.

24 \* Sec. 20. AS 11.56.900(2) is amended to read:

25 (2) "judicial officer" means a supreme court justice, in-  
26 cluding the chief justice, a judge of the court of appeals, a judge of  
27 the superior court, a district court judge, or a magistrate;

28 \* Sec. 21. AS 15.15.030(10) is repealed and re-enacted to read:

29 (10) A separate nonpartisan judicial ballot shall be desig-

1 nated for each judicial district in which a justice or judge is seeking  
2 to succeed himself. The ballot shall be divided into four parts and  
3 each part shall bear a heading indicating the court to which the candi-  
4 date is seeking approval. Within each part the question of whether the  
5 justice or judge shall be approved or rejected shall be set out in  
6 substantially the following manner: (A) "Shall . . . . . be re-  
7 tained as justice of the supreme court for 10 years?"; (B) "Shall . . .  
8 . . . . be retained as judge of the court of appeals for eight years?";  
9 (C) "Shall . . . . . be retained as judge of the superior court for  
10 six years?"; or (D) "Shall . . . . . be retained as judge of the  
11 district court for four years?" Provision shall be made for marking  
12 each question "Yes" or "No".

13 \* Sec. 22. AS 15.35 is amended by adding new sections to read:

14 Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF  
15 APPEALS. Each judge of the court of appeals is subject to approval or  
16 rejection at the first general election held more than three years after  
17 his appointment. If approved, he is thereafter subject to approval or  
18 rejection in a like manner every eighth year.

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

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

28 Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON  
29 BALLOT. The lieutenant governor shall place the name of a judge of the

1 court of appeals who has properly filed a declaration of candidacy on  
2 the judicial ballot in each judicial district of the state for the  
3 general election at which approval is sought.

4 \* Sec. 23. AS 15.57.025 is amended to read:

5 Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFI-  
6 CERS. No later than 60 days before the applicable state election, the  
7 judicial council shall file with the lieutenant governor a statement  
8 including information about each supreme court justice, court of appeals  
9 judge, superior court judge, and district court judge who will be sub-  
10 ject to a retention election, following the evaluation of each such  
11 justice or judge conducted by the judicial council according to law.  
12 Each such statement may not exceed 300 words.

13 \* Sec. 24. AS 15.57.040(2) is amended to read:

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

16 \* Sec. 25. AS 24.55.330(2) is amended to read:

17 (2) "agency" includes a department, office, institution,  
18 corporation, authority, organization, commission, committee, council or  
19 board of a municipality or in the executive, legislative or judicial  
20 branches of the state government, and a department, office, institution,  
21 corporation, authority, organization, commission, committee, council or  
22 board of a municipality or of the state government independent of the  
23 executive, legislative and judicial branches; it also includes an offi-  
24 cer, employee or member of an "agency" acting or purporting to act in  
25 the exercise of his official duties, but does not include the governor,  
26 lieutenant governor, a member of the legislature, justice of the supreme  
27 court, judge of the court of appeals, a superior court judge, [OR]  
28 district court judge, magistrate, member of a city council or borough  
29 assembly, elected city or borough mayor, or a member of an elected

1 school board;

2 \* Sec. 26. AS 39.20.310(1) is amended to read:

3 (1) members of the state legislature, the governor, the  
4 lieutenant governor, and justices and judges of the supreme and superior  
5 courts and of the court of appeals, but nothing in AS 39.20.220 -  
6 39.20.330 may be construed to diminish the salaries fixed by law for  
7 these officers by reason of absence from duty on account of illness or  
8 otherwise;

9 \* Sec. 27. AS 39.35.680(21)(C)(vi) is amended to read:

10 (vi) justices of the supreme court or judges of the  
11 court of appeals or of the superior or district courts of  
12 Alaska;

13 \* Sec. 28. AS 39.50.200(2) is amended to read:

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

17 \* Sec. 29. AS 12.55.120(a) is amended to read:

18 (a) A sentence of imprisonment lawfully imposed by the superior  
19 court for a term or for aggregate terms of [EXCEEDING] one year or more  
20 may be appealed to the court of appeals [SUPREME COURT] by the defendant  
21 on the ground that the sentence is excessive. By appealing a sentence  
22 under this section, the defendant waives the right to plead that by a  
23 revision of the sentence resulting from the appeal he has been twice  
24 placed in jeopardy for the same offense.

25 \* Sec. 30. AS 12.55.120(b) is amended to read:

26 (b) A sentence of imprisonment lawfully imposed by the superior  
27 court may be appealed to the court of appeals [SUPREME COURT] by the  
28 state on the ground that the sentence is too lenient; however, when a  
29 sentence is appealed by the state and the defendant has not appealed the

1 sentence, the court is not authorized to increase the sentence but may  
2 express its approval or disapproval of the sentence and its reasons in a  
3 written opinion.

4 \* Sec. 31. AS 12.55.120 is amended by adding a new subsection to read:

5 (d) A sentence of imprisonment lawfully imposed by the district  
6 court for a term or for aggregate terms exceeding 90 days may be ap-  
7 pealed to the superior court by the defendant on the ground that the  
8 sentence is excessive. By appealing a sentence under this section, the  
9 defendant waives the right to plead that by a revision of the sentence  
10 resulting from the appeal he has been twice placed in jeopardy for the  
11 same offense. A sentence of imprisonment lawfully imposed by the dis-  
12 trict court may be appealed to the superior court by the state on the  
13 ground that the sentence is too lenient; however, when a sentence is  
14 appealed by the state, the court may not increase the sentence but may  
15 express its approval or disapproval of the sentence and its reasons in a  
16 written opinion.

17 \* Sec. 32. A judge of the court of appeals is not required to contribute  
18 to the retirement system under AS 22.25.011 if, at the time of his appoint-  
19 ment to the court of appeals, he holds a judicial office to which the retire-  
20 ment benefits of AS 22.25 apply and to which he was appointed before July 1,  
21 1978.

22 \* Sec. 33. Notwithstanding the effective date of this Act, operations of  
23 the court of appeals shall begin on a date determined by the supreme court  
24 after all judges of the court of appeals have taken office.

25 \* Sec. 34. Cases pending in the supreme court on the date on which the  
26 operations of the court of appeals begin which have been heard by or sub-  
27 mitted to the supreme court on the briefs shall be retained by the supreme  
28 court for decision. The supreme court may transfer to the court of appeals  
29 all other pending cases within the jurisdiction of the court of appeals.

1 \* Sec. 35. It is the intent of the legislature that the court of appeals  
2 begin operations as soon as possible after the effective date of this Act.  
3 The administrative director of courts shall immediately take necessary action  
4 to provide suitable facilities for the court of appeals. When advised by the  
5 supreme court, the judicial council shall meet and submit nominations to the  
6 governor for the initial vacancies for judge of the court of appeals.

7 \* Sec. 36. The amendments enacted in secs. 5, 9 and 12 of this Act apply  
8 only to justices and judges appointed on or after the effective date of this  
9 Act.

10 \* Sec. 37. Sections 8, 15 and 31 of this Act have the effect of changing  
11 Rule 21, Rules of Appellate Procedure and Rule 7, District Court Criminal  
12 Rules by amending AS 22.10.020(a), AS 22.15.240, and AS 12.55 to provide that  
13 a sentence of 90 days or more imposed by the district court may be appealed.

14 \* Sec. 38. Section 29 of this Act has the effect of changing Rule 21,  
15 Rules of Appellate Procedure by enacting and amending AS 12.55.120(a) to  
16 provide that a sentence of one year or more may be appealed.

17 \* Sec. 39. This Act takes effect immediately in accordance with AS 01.10.-  
18 070(c).

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29