

HB

385

# COMMITTEE REPORT

4/7/75

HOUSE

Mr. Speaker:

Date \_\_\_\_\_

The Committee on JUDICIARY has had HB 385

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR \_\_\_\_\_ AND THAT

CS FOR \_\_\_\_\_ DO PASS

"and" recommends it BE REFERRED TO THE \_\_\_\_\_

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

<u>Jerry Gardner</u>	_____	_____
<u>Blaine ...</u>	_____	_____
<u>J.S. ...</u>	_____	_____
<u>...</u>	_____	_____

Members NOT concurring in the Majority report:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

Jerry Gardner Chairman

AMENDMENT

OFFERED IN THE HOUSE:

By: House Judiciary

To: \_\_\_\_\_ HOUSE BILL No. 385

SENATE BILL No. \_\_\_\_\_

PAGE: 1 and 2

LINE: \_\_\_\_\_

page 1, line 22: after "governor" ADD: no more than sixty days

page 2, line 9: after "governor" ADD: no more than sixty days

House Judiciary Committee  
April 14, 1975

HB 52 Public Adjustor

Mr. Bradner, sponsor of the bill, testified that the public presently does not complain about insurance problems because they do not know where to go. The bill would create an insurance ombudsman who would function within the Division of Insurance. He would remain independent and would have authority to pursue routine complaints and identify abusive companies. The Division does not favor an independent Adjustor but would like additional monies so that the Division could handle complaints. Mr. Bradner felt that because of the very existence of the Adjustor, many problems would never develop. A pamphlet advertising that the Adjustor will handle complaints is being provided for in another bill.

page 2, line 4, delete the word "ombudsman" and replace with "will assist" Mr. Parr moved the amendment which passed.

Mr. Brown moved on page 1, line 10 that "director" be changed to "governor". There being no objection, it was so ordered.

Ted Smith explained that an appointee of the governor working independently within a Division would have a difficult time. He suggested that the Adjustor be explicitly made a member of the partially exempt service. Mr. Brown moved that an addition to the bill to this effect be added. There being no objection, it was so ordered.

Mr. Brown moved that a CS be drawn up incorporating the above amendments. It was so ordered.

HB 385 Early Judicial appointment

The Judicial Council, which suggested the bill, submitted proposed language to take care of the problem of possible lame duck appointments. Mr. Brown moved that on page 1, line 22 and page 2, line 9 add "no more than sixty days early" be added. The amendment passed and Mr. Brown moved HB 385 am out of committee do pass. There being no objection, it was so ordered.

Introduced: 4/7/75  
Referred: Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 385

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to judicial appointments."

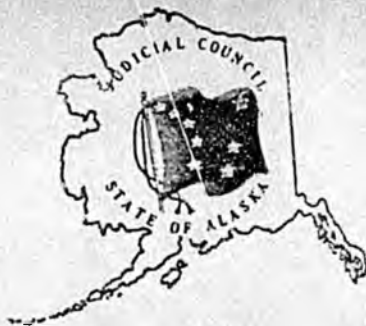
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 22.05.080(b) is amended to read:

9 (b) The office of a supreme court justice, including the office of  
10 chief justice, becomes vacant 90 days after the election at which he is  
11 rejected by a majority of those voting on the question, or for which he  
12 failed to file his declaration of candidacy to succeed himself. [ A  
13 SUCCESSOR TO THE OFFICE OF JUSTICE MAY BE APPOINTED, AND A SUCCESSOR TO  
14 THE OFFICE OF CHIEF JUSTICE MAY BE SELECTED BY THE OTHER JUSTICES,  
15 DURING THIS 90-DAY PERIOD AND THE APPOINTMENT OR SELECTION BECOMES  
16 EFFECTIVE UPON THE VACANCY OCCURRING.] A vacancy in the office also  
17 occurs by reason of the death, retirement, resignation, forfeiture, or  
18 removal from office of a justice. If a vacancy occurs the judicial  
19 council shall meet no more than [WITHIN] 30 days thereafter and submit  
20 to the governor the names of two or more persons nominated to fill each  
21 vacancy. A successor to the office of supreme court justice may be  
22 appointed by the governor <sup>no more than 10 days</sup> before the vacancy occurs, and the appointment  
23 becomes effective upon the vacancy occurring.

24 \* Sec. 2. AS 22.10.100(b) is amended to read:

25 (b) The office of a superior court judge becomes vacant 90 days  
26 after the election at which he is rejected by a majority of those voting  
27 on the question, or for which he failed to file his declaration of  
28 candidacy to succeed himself. [HIS SUCCESSOR MAY BE APPOINTED DURING  
29 THIS PERIOD AND THE APPOINTMENT BECOMES EFFECTIVE UPON THE VACANCY



## Alaska Judicial Council

303 K STREET  
ANCHORAGE, ALASKA  
99501

EXECUTIVE DIRECTOR  
R. ELDRIDGE HICKS

LAY MEMBERS

KENNETH L. BRADY  
LEW M. WILLIAMS, JR.  
ROBERT MOSS, SR.

LAW MEMBERS

MICHAEL A. STEPOVICH  
EUGENE F. WILES  
MICHAEL M. HOLMES

CHAIRMAN, EX OFFICIO

JAY A. RABINOWITZ  
CHIEF JUSTICE  
SUPREME COURT

April 8, 1975

Representative Terry Gardiner  
Alaska House of Representatives  
Pouch V  
Juneau, Alaska 99801

Dear Terry:

Attached please find a revised draft of the legislation proposed by the Judicial Council for improving the permissible timeframe for appointing judges. Pursuant to your observation of the need to insure that a "lame duck" administration could not appoint persons to fill judicial vacancies arising at some unreasonable future time, I have revised the originally proposed legislation to provide that a successor for a judicial vacancy may be appointed by the governor "no more than 60 days" before the vacancy occurs. A 60-day lead time would be sufficient for a private attorney to dispose of pending business and prepare for his move to the new judgeship, while also limiting the power of any governor to make appointments far beyond the tenure of his office. (Of course, the likelihood of such "lame duck" appointments is highly remote even without the present 60-day safeguard. It would require collaboration by a majority of the Judicial Council and the governor--which is itself an unlikely possibility because of the staggered 6-year terms of the Judicial Council members.)

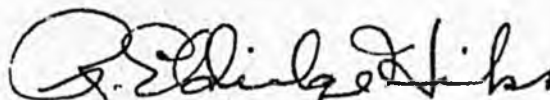
Senator Ziegler has informed me that he will defer action by the Senate Judiciary Committee on this bill relating to the timeframe for judicial appointments, and on the Judicial

Representative Terry Gardiner  
April 8, 1975  
Page Two

Council's proposed bill for evaluating judges prior to retention elections, until action is taken by your committee. I am presuming at this time that you are favorable to introducing these recommendations under the sponsorship of the judiciary committee, by request. If you feel differently, or if I can be of any assistance, please do not hesitate to contact me.

Thank you in advance for your time and consideration.

Sincerely,



R. Eldridge Hicks  
Executive Director

REH/jsh  
cc: Senator Ziegler  
Council members

IN THE \_\_\_\_\_

\_\_\_\_\_ BILL NO. \_\_\_\_\_

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the timeframe for judicial appointments."

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

Section 1. AS 22.05.080(b) is amended to read:

(b) The office of a supreme court justice, including the office of chief justice, becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he failed to file his declaration of candidacy to succeed himself. [A successor to the office of justice may be appointed, and a successor to the office of chief justice may be selected by the other justices, during this 90-day period and the appointment or selection becomes effective upon the vacancy occurring.] A vacancy in the office also occurs by reason of the death, retirement, resignation, forfeiture, or removal from office of a justice. If a vacancy occurs the Judicial Council shall meet [within] no more than 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy. A successor to the office of supreme court justice may be appointed by the governor no more than 60 days before the vacancy occurs, and such an appointment becomes effective upon the vacancy occurring.

Section 2. AS 22.10.100(c) is amended to read:

(d) The office of a superior court judge becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself. [His successor may be appointed during this period and the appointment becomes effective upon the vacancy occurring.] A vacancy in the office also occurs by reason of the death, retirement, resignation, forfeiture or removal from office of a judge. In the event of any vacancy other than an initial vacancy, or

immediately upon clarification of rejection following an election, or immediately upon failure of a judge to file declaration of candidacy, the judicial council shall meet [within] no more than 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy. A successor to the office of superior court judge may be appointed by the governor no more than 60 days before the vacancy occurs, and such an appointment becomes effective upon the vacancy occurring.



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JAY A. RABINOWITZ  
CHIEF JUSTICE  
SUPREME COURT

March 25, 1975

Hon. Terry Gardiner  
Chairman, House Judiciary Committee  
Alaska House of Representatives  
Pouch V  
Juneau, Alaska 99801

Dear Representative Gardiner:

Enclosed please find a report of the Judicial Council with recommendations for changes in the timeframe for nominating and appointing judges to fill vacancies.

The present statutes guard against undue delay by requiring that the Judicial Council meet at least 30 days after the vacancy, and that the Governor make an appointment within 45 days after receiving nominations from the Council. However, the language of these provisions implicitly prevents the Council and the Governor from acting more expeditiously, effecting a smooth transition between the retiring judge and the new judge.

If you have any further questions, the members of the Council will be happy to answer them during the scheduled meeting with legislators in the Governor's Conference Room on Wednesday, April 2nd at 2:00 p.m.

Sincerely,

R. Eldridge Hicks  
Executive Director

REH/jsh  
Enclosure



## Alaska Judicial Council

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**EXECUTIVE DIRECTOR**  
R. ELDRIDGE HICKS

RECOMMENDATIONS FOR CHANGES IN  
THE TIMEFRAME FOR  
JUDICIAL APPOINTMENTS

AS 22.10.100(a) provides, "The governor shall fill a vacancy in the office of superior court judge within 45 days after receiving nominations from the judicial council by appointing one of two or more persons nominated by the council for each vacant position."\* AS 22.10.100(b) provides in part, "In the event of any vacancy other than an initial vacancy, or immediately upon certification of rejection following an election, or immediately upon failure of a judge to file declaration of candidacy, the judicial council shall meet within 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy."

This language indicates quite specifically that the Judicial Council must meet within 30 days after a vacancy occurs to consider applicants for nomination to the governor. However, the language of the statute does not address specifically the question of what constitutes a "vacancy," and the question of whether the Judicial Council may meet to consider applicants prior to the vacancy occurring. This ambiguity in turn leaves unclear whether the governor may appoint a new judge to fill a "vacancy" prior to that vacancy actually occurring.

One sentence in AS 22.10.100(b) provides that "A vacancy in the office also occurs by reason of . . . [the] resignation . . . of a judge," but that sentence does not indicate whether the "vacancy" for screening and appointing purposes

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\* The full texts of the relevant statutes are set forth in Appendix I, below. AS 22.05.080 is essentially similar with regard to supreme court justices as the above statutory reference for superior court judges. All of the following discussion applicable to the appointment of superior court judges is also applicable to the appointment of supreme court justices.

occurs at the time that the resignation is submitted, or, on the effective date of the resignation. However, another sentence in the above-referenced subsection of the statute does shed some light on the question, in the context of a judge's rejection by a majority of the voters. It provides, "The office of a superior court judge becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question . . . ." Here the word "vacant" specifically refers to the date when the judge leaves his official duties, and specifically does not mean the date when the State is placed on notice that an opening soon will occur.

The next sentence of subsection AS 22.10.100(b) provides, "His successor may be appointed during this period and the appointment becomes effective upon the vacancy occurring." This sentence further indicates that a "vacancy" is the date when the judge actually leaves the office, insofar as it makes special provision for an appointment "during this period" between notice of an opening and the actual occurrence of that opening.

Hence, given the fact that under AS 22.10.100(a) the governor has the power only to fill a "vacancy" in the judiciary, he presently does not have the power to appoint a new judge until the resigning or retiring judge actually leaves his official duties, unless that judge is departing after losing a retention election. Because the governor is not empowered to fill an impending vacancy prior to its actual occurrence, a time lag is created in which the judiciary is

understaffed and the opportunity for a smooth transition of work to the successor judge is lost.

AS 22.10.100(b) also provides that, "In the event of any vacancy . . . the judicial council shall meet within 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy." [Emphasis added.] The use of the word "shall" in this sentence indicates quite specifically that the Judicial Council must meet within 30 days after a vacancy occurs, to consider applicants for nomination to the governor. However, the language leaves unanswered the question of whether the Judicial Council may meet to consider applicants prior to the vacancy occurring. The language is stated in terms of limiting the possibilities of delay in filling a superior court vacancy, and does not specifically provide for how expeditiously an impending vacancy can be filled. This ambiguity should be clarified.

Even if one assumes that the Judicial Council can receive applications and make nominations for an impending vacancy prior to the effective date of the judge's resignation, that effort is futile if it proceeds before a timeframe which places the 45th day some time after the effective date of the resignation, because the governor does not have the power to make an appointment before the effective date of the resignation and the governor must exercise his power within 45 days after receiving nominations from the Judicial Council.

The result of this confusing, ambiguous and limiting statutory language is that the screening, nominating and

appointing process for new judges is needlessly delayed even when a retiring judge gives 90-120 days notice of his impending departure. Although it would be desirable to have a new judge appointed and ready to assume responsibilities at the time that the retiring judge leaves his position, it is futile for the Judicial Council to begin advertising a vacancy until the timeframe is such that some period of the 45-day timeframe for gubernatorial appointment falls subsequent to the actual departure of the retiring judge.

The language of the present statute indicates that the probable intent of the drafters was to guard against unnecessary delay in filling a judicial vacancy. The law provides that "The governor shall fill a vacancy . . . within 45 days after receiving nominations . . . ." It also provides that "The judicial council shall meet within 30 days thereafter . . . ." That policy of preventing delay is commendable, however there is no public policy served by delaying (probably inadvertently) the timeframe for nominations and appointments until such time as the vacancy actually occurs.

Appendix II contains the recommendations of the Judicial Council for amending AS 22.05.080(b) and AS 22.10.100(b) in a manner which continues to prevent unnecessary delays in filling judicial vacancies, while also permitting these vacancies to be filled quickly and efficiently. The special provision in the present statute for the appointment of a judge before the vacancy actually occurs when a judge is rejected in his retention election is deleted in favor of a more general reference empowering

the governor to appoint a successor to a judgeship before the vacancy actually occurs, no matter how the vacancy occurred. The amendments would also clarify the fact that the Judicial Council must meet "no more than" 30 days after a vacancy occurs, without implying any constraint on the possibility that the Judicial Council may meet earlier than during the 30 days subsequent to the vacancy.

Sec. 22.05.080. Vacancies. (a) The governor shall fill a vacancy in the office of supreme court justice within 45 days after receiving nominations from the Judicial Council, by appointing one of two or more persons nominated by the Judicial Council for each vacant position.

(b) The office of a supreme court justice, including the office of chief justice, becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he failed to file his declaration of candidacy to succeed himself. A successor to the office of justice may be appointed, and a successor to the office of chief justice may be selected by the other justices, during this 90-day period and the appointment or selection becomes effective upon the vacancy occurring. A vacancy in the office also occurs by reason of the death, retirement, resignation, forfeiture, or removal from office of a justice. If a vacancy occurs the Judicial Council shall meet within 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy. (§ 8(2) ch 50 SLA 1959; am § 30 ch 32 SLA 1971)

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#### APPENDIX I



Alaska Judicial Council

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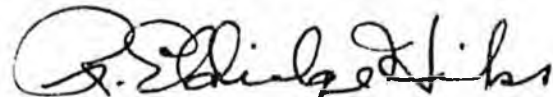
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R. Eldridge Hicks  
Executive Director

REH/jsh  
cc: Senator Ziegler  
Council members

IN THE \_\_\_\_\_

\_\_\_\_\_ BILL NO. \_\_\_\_\_

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

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superose

Gilbert band

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