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COMMITTEE REPORT

3/19/76

HOUSE

FINANCE

Mr. Speaker:

Date

April 13, 1976

The Committee on JUDICIARY has had SB 673

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 SB 673 AND THAT

CS FOR SB 673 DO PASS

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

COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

<u>Tony Handberg</u>	<u>DO PASS</u>	<u>W. J. (Adly) Voh</u>
<u>Sam B. Sater</u>	<u>DO PASS IT PASSED</u>	
<u>W. J. (Adly) Voh</u>	<u>DO PASS</u>	

Members NOT concurring in the Majority report:

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

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

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

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

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

Tony Handberg Chairman

Bill — 3/25  
Craig Borman  
Atty Gen. Council  
SB673 - Jud. appts.

Does not correct defect  
that it was intended  
to correct.

274-8942

after 3.30

Nike Rubenstein

who submitted

Introduced: 2/17/76  
Referred: Judiciary

when act in cases  
of vacancy in judgeship  
no gap  
til action taken.

Retirement Sept 1971 not  
vacant til leaves  
so must make instant  
decision -> Gov then  
has 45 day - long gap.

IN THE SENATE

BY THE JUDICIARY COMMITTEE

SENATE BILL NO. 673

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

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

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

\* Section 1. AS 22.15.170(a) is amended to read:

(a) The governor shall fill a vacancy in the office of district judge 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. The judicial council shall determine the city within a judicial district where the district judge is to sit.

\* Sec. 2. AS 22.15.170(d) is amended to read:

(d) Vacancies for [JUDGES AND] magistrates shall be filled in the same manner as appointments. The office of a district 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 failed to file his declaration of candidacy to succeed himself. 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 certification of rejection following an election,] or immediately upon failure of a judge to file a declaration of candidacy, the judicial council may meet, within 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 district court judge may be appointed by the governor no more than 60 days before the vacancy occurs, if the reason for the vacancy is other

vacancy  
30-day  
may meet  
beforehand

not more than

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than death, and the appointment becomes effective upon the vacancy occurring.

SA 75  
Supr + Super Ct => same problem  
might exist  
will submit language for all three



SB 673

## Alaska Court System

State of Alaska

303 "K" STREET

ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 3, 1976

Honorable Robert H. Ziegler, Sr.  
Chairman, Senate Judiciary Committee  
Pouch V  
Juneau, AK 99811

Re: Vacancies in the District Court

Dear Senator Ziegler:

Recently I requested introduction of a Bill dealing with vacancies in the District Court.

In 1967, the Legislature extended the merit selection and tenure plan in effect for the Supreme and Superior Courts to the District Court. The Statutory provisions governing appointment and tenure of Supreme Court Justices and Superior Court Judges provide that a vacancy in these offices occurs 90 days after a Justice or Judge is rejected by the voters, or 90 days after his or her failure to file a declaration of candidacy for retention election. Legislation enacted in 1975 empowered the Governor to appoint a successor Justice or Superior Court Judge no more than 60 days before a vacancy occurs. Also, the Statutes dealing with appointments to these two levels of court provide that the Governor must make his appointment no more than 45 days after receiving nominations from the Judicial Council.

The Statutes dealing with the District Court (AS 22.15) contain no provisions for establishing the time that vacancies will occur following rejection by the voters, no provision for filling a vacancy before it actually occurs, and no limit on the amount of time the Governor may take to act on nominations. The proposed legislation is necessary to fill these gaps in the Statutes dealing with appointment and tenure of District Court Judges. Although we have never seen a vacancy occur as a result of rejection or failure to declare candidacy, it may well happen in the future. Without any guidance in the Statutes, there would be a good deal of uncertainty as to when the incumbent's tenure ended and the office was available for appointment of a successor. Similarly, while Governors have in the past followed the 45-day Rule in appointing District Court Judges, there is nothing requiring appointment within a specified time. If there were, however, a delay

Honorable Robert H. Ziegler, Sr. - 2  
February 3, 1976

in the appointment beyond six weeks, it could be very disruptive to the operations of the Judiciary. Putting this provision in the Statutes would simply make the rule what has been the practice in the past.

The language of the proposed legislation is nearly identical to AS 22.05.080 and AS 22.10.100, the analagous provisions dealing with the Supreme and Superior Courts. The only substantial difference is that while AS 22.05.080 and AS 22.10.100 require the Judicial Council to act immediately to fill a vacancy on the Supreme or Superior Court, the proposed legislation would permit the Judicial Council to leave a vacant District Court judgeship open until such time as it may become necessary to fill it.

Thank you for giving this matter your consideration. Please let me know if you need further information on this subject.

Very truly yours,

*Arthur H. Snowden, II*

Arthur H. Snowden, II  
Administrative Director

AHS/bd

*(Cover all 3 courts)*  
*4/15*  
*Milton*

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 673

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND 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 22.15.170(a) is amended to read:

9 (a) The governor shall fill a vacancy or appoint a successor to  
 0 fill an impending vacancy in the office of district judge within 45  
 1 days after receiving nominations from the Judicial Council by appoint-  
 2 ment one of two or more persons nominated by the [JUDICIAL] Council  
 3 for each actual or impending vacancy. The appointment to fill an im-  
 4 pending vacancy becomes effective upon the actual occurrence of such  
 5 vacancy. [The Judicial Council shall determine the city within a judi-  
 6 cial district where the district judge is to sit.]

7 \* Sec. 2. AS 22.15.170(d) is amended to read:

8 (d) Vacancies for [JUDGES AND] magistrates shall be filled in the  
 9 same manner as appointments.

0 \* Sec. 3. AS 22.15.170 is amended by adding a new subsection to read:

1 (e) The office of a district court judge becomes vacant 90 days  
 2 after the election at which he is rejected by a majority of those voting  
 3 on the question or, if he fails to file his declaration of candidacy to  
 4 succeed himself, 90 days after the filing deadline. Upon the occur-  
 5 rence of (1) an actual vacancy; (2) the certification of rejection  
 6 following an election; or (3) the failure of a judge to file a declara-  
 7 tion of candidacy to succeed himself, the Judicial Council shall meet  
 8 within 45 days and submit to the governor the names of two or more  
 9 persons qualified for the judicial office; except that this 45-day

1 period may be extended by the council with the concurrence of the  
2 supreme court. In the event of an impending vacancy other than by reason  
3 of rejection or failure to file a declaration of candidacy, the council  
4 may meet at any time within the 90-day period immediately preceding  
5 the effective date of the vacancy and submit to the governor the names  
6 of two or more persons qualified for the judicial office.

7 \* Sec. 4. AS 22.10.100(a) is amended to read:

8 (a) The governor shall fill a vacancy or appoint a successor to  
9 fill an impending vacancy in the office of superior court judge within  
10 45 days after receiving nominations from the Judicial Council, by  
11 appointing one of two or more persons nominated by the Judicial Council  
12 for each actual or impending vacancy [VACANT POSITION]. An appointment  
13 to fill an impending vacancy becomes effective upon the actual occurrence  
14 of the vacancy.

15 \* Sec. 5. AS 22.10.100(b) is repealed and re-enacted to read:

16 (b) The office of a superior court judge becomes vacant 90 days  
17 after the election at which he is rejected by a majority of those voting  
18 on the question or, if he fails to file his declaration of candidacy to  
19 succeed himself, 90 days after the filing deadline. Upon the occurrence  
20 of (1) an actual vacancy; (2) the certification of rejection following  
21 an election; or (3) the failure of a judge to file a declaration of  
22 candidacy to succeed himself, the Judicial Council shall meet within 45  
23 days and submit to the governor the names of two or more persons quali-  
24 field for the judicial office; except that this 45-day period may be  
25 extended by the council with the concurrence of the supreme court. In  
26 the event of an impending vacancy other than by reason of rejection or  
27 failure to file a declaration of candidacy, the council may meet at any  
28 time within the 90-day period immediately preceding the effective date  
29 of the vacancy and submit to the governor the names of two or more

1 persons qualified for the judicial office.

2 \* Sec. 6. AS 22.05.080(a) is amended to read:

3 (a) The governor shall fill a vacancy or appoint a successor to  
4 fill an impending vacancy in the office of supreme court justice within  
5 45 days after receiving nominations from the Judicial Council, by  
6 appointing one of two or more persons nominated by the Judicial Council  
7 for each actual or impending vacancy [VACANT POSITION]. An appointment  
8 to fill an impending vacancy becomes effective upon the actual occurrence  
9 of the vacancy.

10 \* Sec. 7. AS 22.05.080(b) is repealed and re-enacted to read:

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