

1 IN THE HOUSE

BY GRUSSENDORF AND BARNES

2

HOUSE BILL NO. 8

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to judicial retention elections; and
7 providing 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 18. RETENTION ELECTIONS.

11

Sec. 22.18.010. APPROVAL OR REJECTION OF SUPREME COURT JUSTICES.

12

Each supreme court justice is subject to approval or rejection as pro-
13 vided in the Alaska Election Code (AS 15). The judicial council shall
14 conduct an evaluation of each justice before the retention election
15 and shall provide to the public information about that justice and may
16 provide a recommendation regarding retention or rejection. The infor-
17 mation and any recommendation shall be made public at least 60 days
18 before the retention election. The judicial council shall also pro-
19 vide the information and any recommendation to the office of the
20 lieutenant governor in time for publication in the election pamphlet
21 under AS 15.58.050. If a majority of those voting on the question
22 rejects the candidacy of the justice, the rejected justice may not be
23 appointed to fill a vacancy in the supreme court, court of appeals,
24 superior court, or district courts of the state for a period of four
25 years after the rejection.

26

Sec. 22.18.020. APPROVAL OR REJECTION OF COURT OF APPEALS

27

JUDGES. Each judge of the court of appeals is subject to approval or
28 rejection as provided in the Alaska Election Code (AS 15). The judi-
29 cial council shall conduct an evaluation of each judge before the

1 retention election and shall provide to the public information about
2 the judge and may provide a recommendation regarding retention or
3 rejection. The information and any recommendation shall be made
4 public at least 60 days before the retention election. The judicial
5 council shall also provide the information and any recommendation to
6 the office of the lieutenant governor in time for publication in the
7 election pamphlet under AS 15.58.050. If a majority of those voting
8 on the question rejects the candidacy of the judge, the rejected judge
9 may not for a period of four years after the rejection be appointed to
10 fill a vacancy in the supreme court, court of appeals, superior court,
11 or district courts of the state.

12 Sec. 22.18.030. APPROVAL OR REJECTION OF SUPERIOR COURT JUDGES.

13 Each superior court judge is subject to approval or rejection as pro-
14 vided in AS 22.18.050 and the Alaska Election Code (AS 15). The judi-
15 cial council shall conduct an evaluation of each judge before the
16 retention election and shall provide to the public information about
17 the judge and may provide a recommendation regarding retention or
18 rejection. The information and any recommendation shall be made
19 public at least 60 days before the retention election. The judicial
20 council shall also provide the information and any recommendation to
21 the office of the lieutenant governor in time for publication in the
22 election pamphlet under AS 15.58.050. If a majority of those voting
23 on the question rejects the candidacy of the judge, the rejected judge
24 may not for a period of four years after the rejection be appointed to
25 fill a vacancy in the supreme court, court of appeals, superior court,
26 or district courts of the state.

27 Sec. 22.18.040. APPROVAL OR REJECTION OF DISTRICT COURT JUDGES.

28 Each district court judge is subject to approval or rejection as pro-
29 vided in AS 22.18.050 and the Alaska Election Code (AS 15). The

1 judicial council shall conduct an evaluation of each judge before the
2 retention election and shall provide to the public information about
3 the judge and may provide a recommendation regarding retention or
4 rejection. The information and any recommendation shall be made
5 public at least 60 days before the retention election. The judicial
6 council shall also provide the information and any recommendation to
7 the office of the lieutenant governor in time for publication in the
8 election pamphlet under AS 15.58.050. If a majority of those voting
9 on the question rejects the candidacy of the judge, the rejected
10 district judge may not for a period of four years after the rejection
11 be appointed to fill a vacancy in the supreme court, court of appeals,
12 superior court, or district courts of the state.

13 Sec. 22.18.050. JUDICIAL RETENTION ELECTION DISTRICTS FOR THE
14 SUPERIOR AND DISTRICT COURTS. (a) Except as provided in (c) and (d)
15 of this section, if a judge of the superior or district court seeks
16 retention in office, the judge shall be voted on by the voters in the
17 judicial retention election district in which the judge is a resident.

18 (b) For purposes of this section, the judicial retention elec-
19 tion districts of the state are the election districts as they are
20 described in art. XIV of the state constitution as it existed on
21 March 19, 1959.

22 (c) If the judicial council certifies to the director of elec-
23 tions that the judge seeking retention has routinely and frequently
24 heard cases that arise in a district outside of the district in which
25 the judge is resident, the judge will also be voted on for retention
26 by the voters in that district.

27 (d) If the judicial council certifies to the director of elec-
28 tions that most of the cases heard by a judge seeking retention in
29 office do not arise in the district in which the judge is resident,

1 then the judge shall be voted on for retention only by the voters in
2 the district or districts in which the judge routinely and frequently
3 hears cases.

4 * Sec. 2. AS 15.35.090 is amended to read:

5 Sec. 15.35.090. PLACING NAME OF SUPERIOR COURT JUDGE ON BALLOT.
6 The director shall place the name of a superior court judge who has
7 properly filed a declaration of candidacy for retention on the judi-
8 cial ballot in the [JUDICIAL] district or districts as provided under
9 AS 22.18.050 [DESIGNATED IN HIS DECLARATION OF CANDIDACY FOR THE
10 GENERAL ELECTION AT WHICH APPROVAL IS SOUGHT].

11 * Sec. 3. AS 15.35.130 is amended to read:

12 Sec. 15.35.130. PLACING NAME OF DISTRICT JUDGE ON BALLOT. The
13 director shall place the name of a district judge who has properly
14 filed a declaration of candidacy for retention on the judicial ballot
15 in the [JUDICIAL] district or districts as provided under AS 22.18.050
16 [DESIGNATED IN HIS DECLARATION OF CANDIDACY FOR THE GENERAL ELECTION
17 AT WHICH APPROVAL IS SOUGHT].

18 * Sec. 4. AS 22.05.100, AS 22.07.060, AS 22.10.150, and AS 22.15.195
19 are repealed.

20 * Sec. 5. This Act takes effect immediately in accordance with AS 01.-
21 10.070(c).

COMMITTEE REPORT
SENATE

FURTHER:

FINANCE

5/2/83

Date:

5/11/83

Mr. President:

The Committee on JUDICIARY has had HB 8

Relating to judicial retention elections; eff. date

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

~~do pass~~ *may do not pass* do not pass

do pass with attached amendments(s)

replace with CS for _____ same title
 new title

and recommends _____

AND attaches a "Letter of Intent" New Fiscal Note

reports it back without recommendation

referred to the _____ Committee

MEMBERS SIGNING

DO PASS

[Handwritten signatures]

MEMBERS HAVING

OTHER RECOMMENDATIONS:

12 in L, D Not P.
Joseph Do Not Pass

Bill Ray
CHAIRMAN
1 DO NOT PASS



Alaska Court System
State of Alaska

KARLA L. FORSYTHE
General Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, AK 99501

April 26, 1983

Representative Albert P. Adams
Chairman, House Finance Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Adams:

It is my understanding that the House Finance Committee is hearing House Bill 8 on Wednesday, April 27. I have been advised by a committee aide that although testimony from the Alaska Court System will not be necessary, the court system is welcome to submit its comments. This letter is therefore intended to convey to the committee the position of the Alaska Court System regarding House Bill 8.

Proposed sections 22.18.101, .020, .030 and .040 make minor changes to the current statutes dealing with approval and rejection of judges, and consolidate these statutes within one chapter of AS 22. These revisions would have no impact upon the court system.

Proposed section 22.18.050 changes the geographical area for judicial retention elections from judicial districts to the 1959 state election districts. Judges would stand for election in districts where they reside. If the Judicial Council certifies to the director of elections that a judge "routinely and frequently" hears cases that arise outside the district of residence, the judge shall stand for election in that district or districts as well. If "most" of the cases heard by a judge do not arise in a district in which the judge resides, then the judge shall be voted on only by voters in districts where he or she routinely and frequently hears cases.

This provision substantially changes current procedures for retention elections. Under current law, judges face retention election in the judicial districts to which they were originally appointed. If a judge has been assigned or transferred, the

judge seeks approval in the district where the judge has served the major portion of his or her term. The judge designates the appropriate district and the director of elections then places the name of the judge on the ballot in the judicial district designated by the judge. This is a simple and clearcut procedure for determining where a judge will stand for retention election.

In contrast, the proposed legislation provides that the Judicial Council must decide whether a judge has "routinely and frequently" heard cases arising outside the district of residence. This process is confusing, difficult to administer, and legally troublesome.

1. **Constitutional Ramifications.** Article IV, Section 6 of the Alaska Constitution provides that judges shall in the manner provided by law be subject to approval or rejection. Under current procedures, the legislature by law has provided that judges shall seek approval in the districts of their original appointment, or the district in which they have served a major portion of their terms (AS 15.35.080 and .100).

Rather than providing by law for a retention election procedure, the proposed bill delegates to the Judicial Council the task of certifying whether a judge has routinely and frequently heard cases arising outside the district of his or her residence. The phrase "routinely and frequently" is not defined, leaving its interpretation to the Judicial Council.

This approach raises constitutional questions, because it delegates a legislative duty to the judicial branch. Additionally, the manner in which this duty shall be exercised is left to the Judicial Council, and is not "provided by law" as required by the constitution.

It can be argued that the Judicial Council is authorized by the constitution to perform this legislative duty. Article IV, section 9 provides that the council "shall perform other duties assigned by law." However, given the importance of elections and election procedures, it can also be argued that the two sections should not be read together. Thus, the legislature by statute can assign duties to the Judicial Council beyond those listed in the constitution, but the legislature must by statute provide for retention election procedures.

2. **Disenfranchisement of Voters.** A judge will face election in the district of his or her residence, as well as in any district in which he or she routinely and frequently hears cases. However, there are no resident judges in 10 of the 24 districts.

For some of the proposed districts, the lack of a resident judge does not create a problem. As an example, proposed District 11 (Seward) is normally served by the superior judge from Kenai.

However, several districts have neither a resident judge nor one particular judge who "routinely and frequently" hears cases from that district. These districts include District 6 (Haines and Skagway, served by judges from throughout the first judicial district), District 14 (Aleutian chain, served by judges from Anchorage on a rotating basis), and District 15 (Dillingham and Naknek, also served by Anchorage). Additionally, although Judge VanHoomissen provides superior court services to District 18 and 20, district court judges from Fairbanks hear cases in these proposed districts on a rotating basis.

As a result, although cases from these districts are routinely and frequently heard by judges from another district, there is no one judge who routinely and frequently hears cases arising in the district.

If a district is served by more than one judge, none of whom hears matters "routinely and frequently" in the district, there is the possibility that voters in the district would be disenfranchised under the current wording of the legislation.

3. Implementation.

- a. The phrase "routinely and frequently" is not defined. Since judicial retention elections are constitutionally required, this phrase may be too vague to survive a constitutional challenge.
- b. The bills provide that a judge may not be appointed for four years "if a majority of those voting on the question rejects the candidacy of the judge." This provision can be interpreted in two different ways. The first thwarts the goal of judicial accountability to the voters. A majority of the voters in District 12 (Kenai and Homer) might reject a judge, while a majority of the voters in another district in which the judge routinely and frequently hears cases might vote for retention (for example, District 11 - Seward). The statute could be interpreted to require the ouster of the judge based on "a majority of those voting" despite the fact that one district wanted to retain the judge. Although current provisions lead to the same result (for example, the Anchorage vote will outweigh votes from outlying third district locations), this outcome is inconsistent with the aim of the bill.

The statute could also be interpreted to require ouster only in those districts in which a majority voted against retention. This interpretation would lead to substantial administrative problems. The judge would be retained in the less frequently served district, and another judge would have to be appointed for the resident district. This interpretation would affect the court system budget for compensation and retirement, and adversely impact caseload efficiency.

- c. It is confusing to use one set of election districts for election purposes, another set of election districts for judicial retention purposes, and the four judicial districts for administrative purposes.

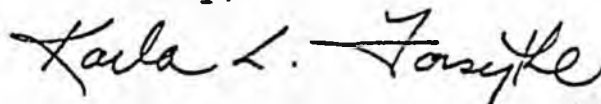
The goal of this legislation as articulated by its proponents is to increase judges' accountability to district residents. The approach outlined in the bill assumes that residents of a circumscribed geographic area will be more familiar with a judge than voters in outlying areas.

There are two difficulties with this assumption. First, voters throughout the state frequently voice concerns about their lack of knowledge regarding even judges in their local courts. Decreasing the size of the voting area will not necessarily increase voters' ability to cast a knowledgeable vote. Second, the decreased voting area has the effect of politicizing retention elections, because issues of the moment rather than overall judicial ability may become the basis for retention or rejection. If the purpose of judicial retention elections is for the electorate to vote based upon a judge's adjudicatory abilities rather than upon the outcome of a sensational case, creating smaller districts increases the risk that politics rather than merit will determine the outcome.

The fundamental principle of accountability to the voters is well served by efficient, workable and constitutionally adequate judicial retention election procedures. The proposed bill falls short of this standard.

The court system will be glad to answer any questions from the committee or to provide additional information.

Sincerely,



Karla L. Forsythe
General Counsel

cc: Representative Robert Bettisworth, Vice Chairman
Representative Vernon Hurlbert
Representative Sam Pestinger
Representative Ben Grussendorf
Representative Terry Martin
Representative Jerry Ward
Representative Joe Flood
Representative John Lindauer
Representative Jim Duncan
Representative Fred Zharoff
Chief Justice Edmond W. Burke
Arthur H. Snowden, II

Alaska State Legislature



REPRESENTATIVE
BEN GRUSSENDORF
P.O. BOX 928
SITKA, ALASKA 99835
(907) 747-8458

HOUSE FINANCE COMMITTEE
SPECIAL COMMITTEE ON FISHERIES

DISTRICT 3
ELFIN COVE
PELICAN
PORT ALEXANDER
SITKA
HOONAH
TENAKEE

WHILE IN JUNEAU
FOUCHY
J. JUNEAU, ALASKA
99811
(907) 465-3824
(907) 465-4965

House of Representatives

April 22, 1983

MEMORANDUM

TO: Rep. Albert Adams
FROM: Rep. Ben Grussendorf
RE: HB 8- Judicial Retention Elections- analysis

Section 1

Adds a chapter to Title 22. This section re-enacts existing language now found in separate chapters relating to approval or rejection of judges (AS 22.10.151, Supreme Court Judges, AS 22.07.060, Court of Appeal Judges, AS 22.10.150, Superior Court Judges and AS 22.15.195, District Court Judges).

Sec. 22.18.050 addresses the retention election districts.

(a) states that the judge shall be voted on in the district in which he lives, except in the cases of (c) and (d) below;

(b) changes the retention election districts to the way they existed on March 19, 1959;

(c) allow voters outside of the district in which a judge lives to vote on the retention of that judge if he routinely and frequently hears cases in that district;

(d) allows that if most cases heard by a judge are outside of the district in which he lives, only those voters in those districts in which he routinely and frequently hears cases shall vote on his retention.

Section 2

Amends AS 15.35.090 to allow Superior Court Judges to be on the ballot in more than one district if he hears cases in more than one district.

Section 3

Amends AS 15.35.130, same as Section 2, for District Court Judges.

Rep.A. Adams- HB 8
April 26, 1983
Page Two

Section 4

Repeals sections now dealing with approval or rejection of judges. (This same language now appears in Section 1 of this legis .ation).

Section 5

Effective date clause. Immediate effective date.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 18, 1982

SUBJECT: Judicial retention elections -- HB 624.
TO: Representative Ramona L. Barnes
Chairman, House Judiciary Committee
FROM: Richard A. Bradley
Legislative Counsel *RB*

You have asked that I explain the provision of HB 624 that ties judicial retention election districts to the legislative election districts as they existed in 1959: Sec. 22.18.050(b) (as enacted in Sec. 1 of HB 624) provides:

(b) For purposes of the section, the judicial retention election districts of the state are the election districts as they are described in art. XIV of the state constitution as it existed on March 19, 1959.

March 19, 1959 has no particular significance in itself; it is merely the effective date of Chapter 50, SLA 1959, the Act that established the Alaska court system and became the basis for AS 22.

The source of the date is AS 22.10.010, the section providing for the "establishment of the superior court" and establishing the borders of the four judicial districts of the superior court. The language of the section establishes each judicial district with reference to identified election districts, "as said districts are described in art. XIV of the state constitution on March 19, 1959".

Ever since the Alaska court system was established, the jurisdiction of the superior court has been tied to the 1959 election district borders. While the districts for the election of members of the legislature have varied since then, no alteration of the borders of the four judicial districts has occurred.

Representative Rona L. Barnes

Page 2

February 18, 1982

I have no idea whether the judicial districts are obsolete in their borders or would benefit from revision. I am aware that there was some interest in that question several years ago but I believe the difficulties that caused the proposals may have been resolved otherwise. But I suggest that this bill should not seek to establish retention districts for judges in terms of the recent reapportionment, for example, without simultaneously altering the judicial districts of the superior court. Since the judicial districts establish lines in which cases may be brought and heard by particular judges, they should also establish the districts in which the judges seek retention.

If I may assist further, please advise. If you wish me to attend your hearing tomorrow, give me a call and I will come over.

RAB:ljb

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST
 Bill/Resolution No.: HB 8 No. 1
 Title: Judicial Retention Elections
 Sponsor: Grussendorf and Barnes
 Requestor: _____

II. FISCAL DETAIL
 Agency Affected: AK Judicial Council
 Program Category Affected: Justice
 BRU, Program of Subprogram(s) Affected: Judicial Council

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		8.8	-0-	3.0	-0-	3.5
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		8.8	-0-	3.0	-0-	3.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		8.8	-0-	3.0	-0-	3.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Francis L. Bremson, Executive Director Phone: 279-2526
 Division: Judicial Council Date: April 27, 1983

Approved by Commissioner: _____ Date: _____
 Department: _____

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)

STATE OF ALASKA
FISCAL NOTE

Revision Date 4-25, 1983

Page 1 of 2

I. REQUEST

Bill/Resolution No.: HB 8 No. 2
 Title: Judicial Retention Elections
 Sponsor: Crussendorf & Barnes
 Requestor: House Finance

II. FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: Exec. Operations
 BRU, Program of Subprogram(s) Affected: Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL			91.8		101.4	
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	91.8	-0-	101.4	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	91.8	-0-	101.4	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

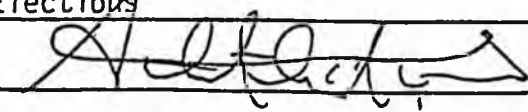
FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman, Deputy Director
 Division: Division of Elections

Phone: 586-6181
 Date: April 26, 1983

Approved by Commissioner: 
 Department: _____

Date: 4-26-83

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)

"An Act relating to judicial retention elections"

ASSUMPTIONS:

1. The passage of this legislation will initially affect the 1984 General Election ballots.
2. There will be 24 election districts as were designated in 1959.
3. Necessity of printing 24 separate ballots - one for each of the judicial retention districts.
4. Additional 12% inflation for each of the subsequent election years.

No additional funds are required beyond the Contractual Services area. Additional postage, printing and advertising costs will be required for the printing of 24 separate ballots. There will also be costs associated with printing additional pages in the Official Election Pamphlet, and postage associated with the heavier weight of the pamphlet.

Programming costs related to ballot counting will be substantial.

A Professional Services Agreement will be required in FY 85 (\$10,000) to contract for the production of a cross-reference listing of communities using the 1959 and 1981 reapportionments.

STATE OF ALASKA
THE LEGISLATURE

POUCH - STATE CAPRO.
JUNE 20 ALASKA 99E 11
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 20, 1981

SUBJECT: Judicial retention election districts
(Work Order No. 12-1852)

TO: Representative Ben F. Grussendorf

FROM: Richard A. Bradley **B**
Legislative Counsel

Enclosed is a bill responsive to your request.

I consider the bill constitutional.

Article IV, sec. 6 explicitly permits the legislature to require that a superior court judge be subject to approval or rejection on a nonpartisan ballot "in the manner provided by law". In my opinion, the present formulas regarding the retention elections for judges of the superior court are not of a constitutional dimension.

Regarding the district court, the procedures for their retention elections (or not) are entirely committed to legislative discretion, assuming only general principles of fairness, since that court is a legislative creation.

As the bill evolved during the drafting and review process, I had initially dealt with southeastern Alaska separately as I had suggested to you that I might. I established separate election retention districts for each of the six election districts that existed in southeastern Alaska as of 1959. Note that the "jurisdiction of the superior court" is cast in terms of the election districts as they existed in 1959. See AS 22.10.010. It makes sense, therefore, to have the retention elections conform to the same districts.

But as I considered the question, it seemed that the logic of the application to this judicial district presented no special or unique questions and that therefore the appli-

Page 2
November 20, 1981

cation of the bill should be made statewide. That resolves the problem of "special and local legislation". This has been done and I think that the result is not awkward and is probably reasonable.

It is simply a drafting technique to move the four provisions dealing with "approval or rejection" of judges into one new chapter. Thus you will recognize that new AS 22.18.010 is essentially identical to present sec. 22.05.100; similarly AS 22.18.020, 22.18.030, and 22.18.040 are AS 22.07.060, 22.10.150 and 22.15.195, respectively.

Sec. 22.18.050 states the basic goals of your request. The concepts of sec. 50(b) are derived from AS 22.10.010, the section establishing the jurisdiction of the superior court.

The six districts in southeastern Alaska from which judges will be elected are:

1. Prince of Wales;
2. Ketchikan;
3. Wrangell - Petersburg;
4. Sitka;
5. Juneau; and
6. Lynn Canal - Icy Straits.

This results in a general shrinking of the areas in which a judge is voted on, unless he routinely hears cases in another 1959 election district.

The only problem in implementation of the section lies in the responsibility given to the judicial council to determine whether the judge "routinely and frequently" hears cases outside his division of residence. I have intentionally not sought to define the phrase; I consider that it gives an adequate guide to the council and a more precise tool may be undesirable.

As suggested, I have provided that the judge will also be voted on in a district outside the district in which he was a resident if the judicial council certifies to the director of elections that the judge "heard cases routinely and frequently" outside of the district in which the judge was a resident. I consider this provision necessary to deal with those residents of the state who may be outside the district

where judges are resident. If they are excluded from voting on judges where the judge "routinely and frequently" travels to hear cases affecting them, I think problems are created.

You should recognize also that the amendments to AS 15.35.090 and 15.35.130 appear to constitute a reversal of the present law (at present the judge "designates" the judicial district in which he seeks election) and the establishment of a more objective standard than the one stated in existing law to determine where a judge should be voted on. At the same time, recognize that it will have the result of changing the present situation on retention elections in westward Alaska (as in southeastern). I have not sought to anticipate its implications there.

If I may answer any other questions on this matter, please advise.

RAB:ljb

Enclosure



Alaska Judicial Council

NON-ATTORNEY MEMBERS
MARY JANE FATI
JOHN E. LONGWORTH
ROBERT M. MOSS

1031 W. Fourth Avenue, Suite 301
ANCHORAGE, ALASKA
99501
(907) 279-2526

EXECUTIVE DIRECTOR
FRANCIS L. BRIMSON

ATTORNEY MEMBERS
JAMES B. BRADLEY
JOSEPH L. YOUNG
BARBARA L. SCHUMMANN

CHAIRMAN, EX OFFICIO
EDMOND W. BURKE
CHIEF JUSTICE
SUPREME COURT

March 16, 1983

Representative Charlie Bussell
Chairman, House Judiciary Committee
State Capitol
Pouch 5
Juneau, AK 99811

RE: House Bill 8 and Senate Bill 84

Dear Representative Bussell:

The Alaska Judicial Council wishes to go on record in opposition to House Bill 8 and Senate Bill 84, both of which are currently under consideration by the Alaska State Legislature. Both bills would alter the number and size of election districts for judicial retention purposes and, thereby, the roles and responsibilities of the Judicial Council.

At the Council's meeting in Anchorage on February 15-16, 1983, Council members specified the following statutory, administrative and constitutional bases for its objections to the legislation:

Statutory Reasons:

- The difficulty of the Judicial Council determining, on the basis of vague language ("routinely and frequently"), whether a judge should be subject to election in districts other than the one in which he/she resides;
- The possible conflict created by requiring the Council to determine where a judge must run, while at the same time evaluating the judge for retention purposes.

Representative Charlie Bussell
March 16, 1983
Page two

Administrative Reasons

- The possibility that some voters, while within the jurisdiction of one Judicial District, would actually vote for retention purposes for the judge of another Judicial District;
- The confusion occasioned by using different election districts for retention elections than are used for general elections.

Constitutional Reasons

- The possibility that voters in whose election districts no Superior and/or District Court exists may be disenfranchised, either because the election district does not include a court, or because the district is served by one or more judges, none of whom hear matters "routinely or frequently" in such districts.

Should you or any member of your Committee wish to discuss the Council's position with regard to this legislation in further detail, please let me know. I would be pleased to appear before the committee to testify in opposition to this legislation at such time and place as may be convenient.

Thank you for the opportunity to present the Council's position on this matter.

Sincerely,



Francis L. Bremson
Executive Director

FLB/pjd

cc: Alaska Judicial Council



Alaska Court System
State of Alaska

KARLA L. FORSYTHE
General Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, AK 99501

April 26, 1983

Representative Albert P. Adams
Chairman, House Finance Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Adams:

It is my understanding that the House Finance Committee is hearing House Bill 8 on Wednesday, April 27. I have been advised by a committee aide that although testimony from the Alaska Court System will not be necessary, the court system is welcome to submit its comments. This letter is therefore intended to convey to the committee the position of the Alaska Court System regarding House Bill 8.

Proposed sections 22.18.101, .020, .030 and .040 make minor changes to the current statutes dealing with approval and rejection of judges, and consolidate these statutes within one chapter of AS 22. These revisions would have no impact upon the court system.

Proposed section 22.18.050 changes the geographical area for judicial retention elections from judicial districts to the 1959 state election districts. Judges would stand for election in districts where they reside. If the Judicial Council certifies to the director of elections that a judge "routinely and frequently" hears cases that arise outside the district of residence, the judge shall stand for election in that district or districts as well. If "most" of the cases heard by a judge do not arise in a district in which the judge resides, then the judge shall be voted on only by voters in districts where he or she routinely and frequently hears cases.

This provision substantially changes current procedures for retention elections. Under current law, judges face retention election in the judicial districts to which they were originally appointed. If a judge has been assigned or transferred, the

judge seeks approval in the district where the judge has served the major portion of his or her term. The judge designates the appropriate district and the director of elections then places the name of the judge on the ballot in the judicial district designated by the judge. This is a simple and clearcut procedure for determining where a judge will stand for retention election.

In contrast, the proposed legislation provides that the Judicial Council must decide whether a judge has "routinely and frequently" heard cases arising outside the district of residence. This process is confusing, difficult to administer, and legally troublesome.

1. **Constitutional Ramifications.** Article IV, Section 6 of the Alaska Constitution provides that judges shall in the manner provided by law be subject to approval or rejection. Under current procedures, the legislature by law has provided that judges shall seek approval in the districts of their original appointment, or the district in which they have served a major portion of their terms (AS 15.35.080 and .100).

Rather than providing by law for a retention election procedure, the proposed bill delegates to the Judicial Council the task of certifying whether a judge has routinely and frequently heard cases arising outside the district of his or her residence. The phrase "routinely and frequently" is not defined, leaving its interpretation to the Judicial Council.

This approach raises constitutional questions, because it delegates a legislative duty to the judicial branch. Additionally, the manner in which this duty shall be exercised is left to the Judicial Council, and is not "provided by law" as required by the constitution.

It can be argued that the Judicial Council is authorized by the constitution to perform this legislative duty. Article IV, section 9 provides that the council "shall perform other duties assigned by law." However, given the importance of elections and election procedures, it can also be argued that the two sections should not be read together. Thus, the legislature by statute can assign duties to the Judicial Council beyond those listed in the constitution, but the legislature must by statute provide for retention election procedures.

2. **Disenfranchisement of Voters.** A judge will face election in the district of his or her residence, as well as in any district in which he or she routinely and frequently hears cases. However, there are no resident judges in 16 of the 24 districts.

For some of the proposed districts, the lack of a resident judge does not create a problem. As an example, proposed District 11 (Seward) is normally served by the superior judge from Kenai.

However, several districts have neither a resident judge nor one particular judge who "routinely and frequently" hears cases from that district. These districts include District 6 (Haines and Skagway, served by judges from throughout the first judicial district), District 14 (Aleutian chain, served by judges from Anchorage on a rotating basis), and District 15 (Dillingham and Naknek, also served by Anchorage). Additionally, although Judge VanHoomissen provides superior court services to District 18 and 20, district court judges from Fairbanks hear cases in these proposed districts on a rotating basis.

As a result, although cases from these districts are routinely and frequently heard by judges from another district, there is no one judge who routinely and frequently hears cases arising in the district.

If a district is served by more than one judge, none of whom hears matters "routinely and frequently" in the district, there is the possibility that voters in the district would be disenfranchised under the current wording of the legislation.

3. Implementation.

- a. The phrase "routinely and frequently" is not defined. Since judicial retention elections are constitutionally required, this phrase may be too vague to survive a constitutional challenge.
- b. The bills provide that a judge may not be appointed for four years "if a majority of those voting on the question rejects the candidacy of the judge." This provision can be interpreted in two different ways. The first thwarts the goal of judicial accountability to the voters. A majority of the voters in District 12 (Kenai and Homer) might reject a judge, while a majority of the voters in another district in which the judge routinely and frequently hears cases might vote for retention (for example, District 11 - Seward). The statute could be interpreted to require the ouster of the judge based on "a majority of those voting" despite the fact that one district wanted to retain the judge. Although current provisions lead to the same result (for example, the Anchorage vote will outweigh votes from outlying third district locations), this outcome is inconsistent with the aim of the bill.

The statute could also be interpreted to require ouster only in those districts in which a majority voted against retention. This interpretation would lead to substantial administrative problems. The judge would be retained in the less frequently served district, and another judge would have to be appointed for the resident district. This interpretation would affect the court system budget for compensation and retirement, and adversely impact caseload efficiency.

- c. It is confusing to use one set of election districts for election purposes, another set of election districts for judicial retention purposes, and the four judicial districts for administrative purposes.

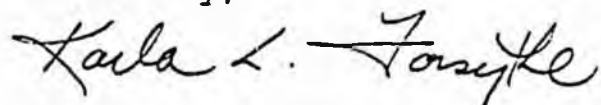
The goal of this legislation as articulated by its proponents is to increase judges' accountability to district residents. The approach outlined in the bill assumes that residents of a circumscribed geographic area will be more familiar with a judge than voters in outlying areas.

There are two difficulties with this assumption. First, voters throughout the state frequently voice concerns about their lack of knowledge regarding even judges in their local courts. Decreasing the size of the voting area will not necessarily increase voters' ability to cast a knowledgeable vote. Second, the decreased voting area has the effect of politicizing retention elections, because issues of the moment rather than overall judicial ability may become the basis for retention or rejection. If the purpose of judicial retention elections is for the electorate to vote based upon a judge's adjudicatory abilities rather than upon the outcome of a sensational case, creating smaller districts increases the risk that politics rather than merit will determine the outcome.

The fundamental principle of accountability to the voters is well served by efficient, workable and constitutionally adequate judicial retention election procedures. The proposed bill falls short of this standard.

The court system will be glad to answer any questions from the committee or to provide additional information.

Sincerely,



Karla L. Forsythe
General Counsel

cc: Representative Robert Bettisworth, Vice Chairman
Representative Vernon Hurlbert
Representative Sam Pestinger
Representative Ben Grussendorf
Representative Terry Martin
Representative Jerry Ward
Representative Joe Flood
Representative John Lindauer
Representative Jim Duncan
Representative Fred Zharoff
Chief Justice Edmond W. Burke
Arthur H. Snowden, II

Alaska State Legislature

REPRESENTATIVE
BEN GRUSSENDORF
P.O. BOX 928
SITKA, ALASKA 99835
907/747-8458

HOUSE FINANCE COMMITTEE
SPECIAL COMMITTEE ON FISHERIES

DISTRICT 3
ELFIN COVE
PELICAN
PORT ALEXANDER
SITKA
HOONAH
TENAKEE



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811
907/465-3824
907/465-4965

House of Representatives

April 22, 1983

MEMORANDUM

TO: Rep. Albert Adams
FROM: Rep. Ben Grussendorf
RE: HB 8- Judicial Retention Elections- analysis

Section 1

Adds a chapter to Title 22. This section re-enacts existing language now found in separate chapters relating to approval or rejection of judges (AS 22.10.151, Supreme Court Judges, AS 22.07.060, Court of Appeal Judges, AS 22.10.150, Superior Court Judges and AS 22.15.195, District Court Judges).

Sec. 22.18.050 addresses the retention election districts.

(a) states that the judge shall be voted on in the district in which he lives, except in the cases of (c) and (d) below;

(b) changes the retention election districts to the way they existed on March 19, 1959;

(c) allow voters outside of the district in which a judge lives to vote on the retention of that judge if he routinely and frequently hears cases in that district;

(d) allows that if most cases heard by a judge are outside of the district in which he lives, only those voters in those districts in which he routinely and frequently hears cases shall vote on his retention.

Section 2

Amends AS 15.35.090 to allow Superior Court Judges to be on the ballot in more than one district if he hears cases in more than one district.

Section 3

Amends AS 15.35.130, same as Section 2, for District Court Judges.

Rep.A. Adams- HB 8
April 26, 1983
Page Two

Section 4

Repeals sections now dealing with approval or rejection of judges. (This same language now appears in Section 1 of this legislation).

Section 5

Effective date clause. Immediate effective date.

STATE OF ALASKA
THE LEGISLATURE

POUCH - STATE CAPITOL
JUNEAU, ALASKA 99801
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 20, 1981

SUBJECT: Judicial retention election districts
(Work Order No. 12-1852)

TO: Representative Ben F. Grussendorf

FROM: Richard A. Bradley **B**
Legislative Counsel

Enclosed is a bill responsive to your request.

I consider the bill constitutional.

Article IV, sec. 6 explicitly permits the legislature to require that a superior court judge be subject to approval or rejection on a nonpartisan ballot "in the manner provided by law". In my opinion, the present formulas regarding the retention elections for judges of the superior court are not of a constitutional dimension.

Regarding the district court, the procedures for their retention elections (or not) are entirely committed to legislative discretion, assuming only general principles of fairness, since that court is a legislative creation.

As the bill evolved during the drafting and review process, I had initially dealt with southeastern Alaska separately as I had suggested to you that I might. I established separate election retention districts for each of the six election districts that existed in southeastern Alaska as of 1959. Note that the "jurisdiction of the superior court" is cast in terms of the election districts as they existed in 1959. See AS 22.10.010. It makes sense, therefore, to have the retention elections conform to the same districts.

But as I considered the question, it seemed that the logic of the application to this judicial district presented no special or unique questions and that therefore the appli-

page 2
November 20, 1981

cation of the bill should be made statewide. That resolves the problem of "special and local legislation". This has been done and I think that the result is not awkward and is probably reasonable.

It is simply a drafting technique to move the four provisions dealing with "approval or rejection" of judges into one new chapter. Thus you will recognize that new AS 22.-18.010 is essentially identical to present sec. 22.05.100; similarly AS 22.18.020, 22.18.030, and 22.18.040 are AS 22.-07.060, 22.10.150 and 22.15.195, respectively.

Sec. 22.18.050 states the basic goals of your request. The concepts of sec. 50(b) are derived from AS 22.10.010, the section establishing the jurisdiction of the superior court.

The six districts in southeastern Alaska from which judges will be elected are:

1. Prince of Wales;
2. Ketchikan;
3. Wrangell - Petersburg;
4. Sitka;
5. Juneau; and
6. Lynn Canal - Icy Straits.

This results in a general shrinking of the areas in which a judge is voted on, unless he routinely hears cases in another 1959 election district.

The only problem in implementation of the section lies in the responsibility given to the judicial council to determine whether the judge "routinely and frequently" hears cases outside his division of residence. I have intentionally not sought to define the phrase; I consider that it gives an adequate guide to the council and a more precise tool may be undesirable.

As suggested, I have provided that the judge will also be voted on in a district outside the district in which he was a resident if the judicial council certifies to the director of elections that the judge "heard cases routinely and frequently" outside of the district in which the judge was a resident. I consider this provision necessary to deal with those residents of the state who may be outside the district

where judges are resident. If they are excluded from voting on judges where the judge "routinely and frequently" travels to hear cases affecting them, I think problems are created.

You should recognize also that the amendments to AS 15.35.090 and 15.35.130 appear to constitute a reversal of the present law (at present the judge "designates" the judicial district in which he seeks election) and the establishment of a more objective standard than the one stated in existing law to determine where a judge should be voted on. At the same time, recognize that it will have the result of changing the present situation on retention elections in westward Alaska (as in southeastern). I have not sought to anticipate its implications there.

If I may answer any other questions on this matter, please advise.

RAB:ljb

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 18, 1982

SUBJECT: Judicial retention elections -- HB 624.
TO: Representative Ramona L. Barnes
Chairman, House Judiciary Committee
FROM: Richard A. Bradley
Legislative Counsel *B*

You have asked that I explain the provision of HB 624 that ties judicial retention election districts to the legislative election districts as they existed in 1959: Sec. 22.18.050(b) (as enacted in Sec. 1 of HB 624) provides:

(b) For purposes of the section, the judicial retention election districts of the state are the election districts as they are described in art. XIV of the state constitution as it existed on March 19, 1959.

March 19, 1959 has no particular significance in itself; it is merely the effective date of Chapter 50, SLA 1959, the Act that established the Alaska court system and became the basis for AS 22.

The source of the date is AS 22.10.010, the section providing for the "establishment of the superior court" and establishing the borders of the four judicial districts of the superior court. The language of the section establishes each judicial district with reference to identified election districts, "as said districts are described in art. XIV of the state constitution on March 19, 1959".

Ever since the Alaska court system was established, the jurisdiction of the superior court has been tied to the 1959 election district borders. While the districts for the election of members of the legislature have varied since then, no alteration of the borders of the four judicial districts has occurred.

Representative Rona L. Barnes

Page 2

February 18, 1982

I have no idea whether the judicial districts are obsolete in their borders or would benefit from revision. I am aware that there was some interest in that question several years ago but I believe the difficulties that caused the proposals may have been resolved otherwise. But I suggest that this bill should not seek to establish retention districts for judges in terms of the recent reapportionment, for example, without simultaneously altering the judicial districts of the superior court. Since the judicial districts establish lines in which cases may be brought and heard by particular judges, they should also establish the districts in which the judges seek retention.

If I may assist further, please advise. If you wish me to attend your hearing tomorrow, give me a call and I will come over.

RAB:ljb



Alaska Judicial Council

NON-ATTORNEY MEMBERS
MARY JANE FATE
JOHN E. LUNDWORTH
ROBERT H. MOSS

1031 W. Fourth Avenue, Suite 301
ANCHORAGE, ALASKA
99501
(907) 278-2526

EXECUTIVE DIRECTOR
FRANCIS L. BREMBON

ATTORNEY MEMBERS
JAMES B. BRADLEY
JOSEPH L. YOUNG
BARBARA L. SCHUMMANN

CHAIRMAN, EX OFFICIO
EDWARD W. BURKE
CHIEF JUSTICE
SUPREME COURT

March 16, 1983

Representative Charlie Bussell
Chairman, House Judiciary Committee
State Capitol
Pouch 5
Juneau, AK 99811

RE: House Bill 8 and Senate Bill 84

Dear Representative Bussell:

The Alaska Judicial Council wishes to go on record in opposition to House Bill 8 and Senate Bill 84, both of which are currently under consideration by the Alaska State Legislature. Both bills would alter the number and size of election districts for judicial retention purposes and, thereby, the roles and responsibilities of the Judicial Council.

At the Council's meeting in Anchorage on February 15-16, 1983, Council members specified the following statutory, administrative and constitutional bases for its objections to the legislation:

Statutory Reasons:

- The difficulty of the Judicial Council determining, on the basis of vague language ("routinely and frequently"), whether a judge should be subject to election in districts other than the one in which he/she resides;
- The possible conflict created by requiring the Council to determine where a judge must run, while at the same time evaluating the judge for retention purposes.

Representative Charlie Bussell
March 16, 1983
Page two

Administrative Reasons

- The possibility that some voters, while within the jurisdiction of one Judicial District, would actually vote for retention purposes for the judge of another Judicial District;
- The confusion occasioned by using different election districts for retention elections than are used for general elections.

Constitutional Reasons

- The possibility that voters in whose election districts no Superior and/or District Court exists may be disenfranchised, either because the election district does not include a court, or because the district is served by one or more judges, none of whom hear matters "routinely or frequently" in such districts.

Should you or any member of your Committee wish to discuss the Council's position with regard to this legislation in further detail, please let me know. I would be pleased to appear before the committee to testify in opposition to this legislation at such time and place as may be convenient.

Thank you for the opportunity to present the Council's position on this matter.

Sincerely,



Francis L. Bremson
Executive Director

FLB/pjd

cc: Alaska Judicial Council