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B

8

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

5/2/83

Date: 5/1/83

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 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

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

2 - L D.N. + P.

Respectfully Do Not Pass

[Signature]

CHAIRMAN/
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.

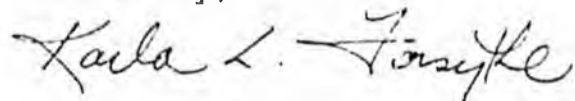
The goal of this legislation as articulated by its proponents is to increase judges' accountability to district residents. The approach outlined in the bill assumes that residents of a circumscribed geographic area will be more familiar with a judge than voters in outlying areas.

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

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)

GENERAL FUND		8.8	-0-	3.0	-0-	3.5
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: 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: Grussendorf & 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

Phone: 586-6181

Division: Division of Elections

Date: April 26, 1983

Approved by Commissioner: 

Date: 4-26-83

Department: _____

Distribution:

Original to Legislative Finance

Copy to Office of Management and Budget (for Legislature introduced bills)

(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.