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BILL FILE LOG

BILL # SB124

2/4 Bill introduced

2/7 - Copies of Constitution & Statutory authority

2/7 Bill heard in committee

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB124
 Title: "An Act relating to judicial vacancy; ed."
 Sponsor: Senate Judiciary
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Court System
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 CRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Roger Lewis, Committee Aide Phone: 465-3717
 Division: Senate Judiciary Committee Date: 2/7/85

Approved by Commissioner: [Signature] Date: 2/7/85
 Agency: COURT SYSTEM

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

ALASKA CONSTITUTION, ARTICLE IV, SECTION 7

Section 7. Vacancy. The office of any supreme court justice or superior court judge becomes vacant ninety 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.

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Collateral references. — Validity of
requirement that candidate or public offi-
cer have been resident of governmental
unit for specified period, 65 ALR3d 1048.
Validity and construction of

constitutional or statutory provision
making legal knowledge or experience a
condition of eligibility for judicial office, 71
ALR3d 498.

Sec. 22.05.080. Vacancies. (a) The governor shall fill a vacancy or
appoint a successor to fill an impending 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 nomi-
nated by the judicial council for each actual or impending vacancy. An
appointment to fill an impending vacancy becomes effective upon the
actual occurrence of the vacancy.

(b) The office of a supreme court justice, including the office of chief
justice, becomes vacant 90 days after the election in which the justice
is rejected by a majority of those voting on the question or, if the justice
fails to file a declaration of candidacy, 90 days after the filing deadline.
Upon the occurrence of (1) an actual vacancy; (2) the certification of
rejection following an election; or (3) the failure of a justice to file a
declaration of candidacy, the judicial council shall meet within 45 days
and submit to the governor the names of two or more persons qualified
for the judicial office; except that this 45-day period may be extended
by the council with the concurrence of the supreme court. In the event
of an impending vacancy other than by reason of rejection or failure to
file a declaration of candidacy, the council may meet at any time within
the 90-day period immediately preceding the effective date of the
vacancy and submit to the governor the names of two or more persons
qualified for the judicial office. (§ 8(2) ch 50 SLA 1959; am § 30 ch 32
SLA 1971; am § 1 ch 93 SLA 1975; am §§ 5, 6 ch 194 SLA 1976)

Editor's notes. — This section was with AS 01.05.031(c) and § 4, Chapter 58,
redrafted by the revisor of statutes to SLA 1982.
remove personal pronouns in conformity

Sec. 22.05.090. Oath of office. Each supreme court justice, upon
entering office, shall take and subscribe to an oath of office required of
all officers under the constitution and such further oath or affirmation
as may be prescribed by law. (§ 9 ch 50 SLA 1959)

Sec. 22.05.100. Approval or rejection. Each supreme court justice
is subject to approval or rejection as provided in the Alaska Election
Code (AS 15). The judicial council shall conduct an evaluation of each
justice before the retention election and shall provide to the public
information about that justice and may provide a recommendation
regarding retention or rejection. Such information and any recommen-
dation shall be made public at least 60 days before the retention elec-

Revisor's note. — As enacted, the reference in the next-to-last sentence was to AS 15.57.025, which section was repealed by ch. 100, SLA 1980, and reenacted as AS 15.58.050.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

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

(b) The office of a judge of the court of appeals becomes vacant 90 days after the election at which the judge is rejected by a majority of those voting on the question or for which the judge fails to file a declaration of candidacy. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy, to succeed the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; however, the 45-day period may be extended by the judicial council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the judicial council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office. (§ 1 ch 12 SLA 1980)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 22.07.080. Restrictions. A judge of the court of appeals while holding office may not practice law, or engage in the conduct of any other profession, vocation or business for profit or compensation, which conduct would interfere with the performance of the judicial duties of the judge, nor may a judge hold office in a political party, or hold any other office or position of profit under the United States, the state or its political subdivisions. A judge of the court of appeals filing for another elective public office other than delegate to a constitutional convention of this state or the United States forfeits the judicial position. (§ 1 ch 12 SLA 1980)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498.

Constitutional restrictions on nonattorney acting as judge in criminal proceeding. 71 ALR3d 562.

Sec. 22.10.100. Vacancies. (a) The governor shall fill a vacancy or appoint a successor to fill an impending 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 actual or impending vacancy. An appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The office of a superior court judge becomes vacant 90 days after the election at which the judge is rejected by a majority of those voting on the question or, if a judge fails to file a declaration of candidacy, 90 days after the filing deadline. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; except that this 45-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office. (§ 23 ch 50 SLA 1959; am § 2 ch 93 SLA 1975; am §§ 3, 4 ch 194 SLA 1976)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity

with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

NOTES TO DECISIONS

Cited in *In re G.M.B.*, Sup. Ct. Op. No. 687 (File No. 1412), 483 P.2d 1006 (1971).

Collateral references. — Power of successor judge taking office during term time

to vacate, etc., judgement entered by his predecessor. 11 ALR2d 1117.

Sec. 22.10.110. Oath of office. Each superior court judge, upon entering office, shall take and subscribe to an oath of office required of all officers under the constitution and such further oath or affirmation as may be prescribed by law. (§ 24 ch 50 SLA 1959)

Sec. 22.10.120. Number of judges. The superior court consists of 26 judges, five of whom shall be judges in the first judicial district,

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(b) A magistrate shall be a citizen of the United States and of the state, at least 21 years of age, and a resident of the state for at least six months immediately preceding appointment. The supreme court may prescribe additional qualifications. (§ 11 ch 184 SLA 1959; am § 1 ch 117 SLA 1967; am § 12 ch 12 SLA 1980)

Effect of amendments. — The 1980 amendment rewrote subsection (a).

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Section 36, ch. 12, SLA 1980 provides: "The amendments enacted in Secs. 5, 9 and 12 of this Act apply only to justices and judges appointed on or after the effective date of this Act [March 22, 1980]."

NOTES TO DECISIONS

Appointment of district court judge as superior court judge pro tempore. — The chief justice's authority under Alas. Const., art. IV, § 16 to assign a judge "from one court . . . to another for temporary service," included the authority to appoint a judge of the district court to serve as judge of the superior court pro tempore, regardless of the differences that existed in the qualifications required by statute for permanent appointment to

either of those courts prior to the 1980 amendments. *Oxerok v. State, Sup. Ct. Op. No. 2076* (File No. 3902), 611 P.2d 913 (1980).

Applied in *Buckalew v. Holloway, Sup. Ct. Op. No. 1988* (File No. 4058), 604 P.2d 240 (1979).

Cited in *Stephens v. Hammersley, Sup. Ct. Op. No. 1275* (File No. 2505), 550 P.2d 1268, 552 P.2d 652 (1976).

Collateral references. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 ALR3d 1048.

Validity and construction of constitu-

tional or statutory provision making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498.

Validity of age requirement for state public office. 90 ALR3d 900.

Sec. 22.15.170. Selection of district judges and magistrates. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in an 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 council for each actual or impending vacancy. The appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The presiding judge of the superior court in each judicial district may appoint acting district judges as needed to serve at the pleasure of the presiding judge for a term of no longer than 12 months or until succeeded by an appointment made under (a) of this section, whichever first occurs. An acting district judge shall be a citizen of the United States and of the state, at least 21 years of age, but need not be licensed to practice law in any of the United States and need not have established Alaska residence before appointment. Service as an acting district judge is not considered a judicial service for the purposes of AS

22.25 unless the judge is subsequently appointed under (a) of this section.

(c) The presiding judge of the superior court in each judicial district shall appoint the magistrates for the district court for the judicial district. Each magistrate serves at the pleasure of the presiding judge of the superior court in the judicial district for which appointed.

(d) Vacancies for magistrates shall be filled in the same manner as appointments.

(e) The office of a district court judge becomes vacant 90 days after the election at which the judge is rejected by a majority of those voting on the question or, if a judge fails to file a declaration of candidacy, 90 days after the filing deadline. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; except that this 45-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office. (§ 12 ch 184 SLA 1959; am § 2 ch 138 SLA 1966; am § 2 ch 117 SLA 1967; am § 1 ch 162 SLA 1968; am § 1 ch 165 SLA 1968; am § 3 ch 160 SLA 1972; am §§ 1, 2 ch 194 SLA 1976)

Cross references. — As to voting to approve or reject a district judge, see AS 15.35.100 — 15.35.130.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58,

SLA 1982.

Legislative history reports. — For report on ch. 162, SLA 1968 (HB 461), see 1968 House Journal, p. 168. For legislative committee report on ch. 165, SLA 1968 (HB 463), see 1968 House Journal, p. 160.

NOTES TO DECISIONS

- I. General Consideration.
- II. Selection Procedure.
- III. Magistrates.

I. GENERAL CONSIDERATION.

Stated in *Theodore v. State*, Sup. Ct. Op. No. 305 (File No. 550), 407 P.2d 182 (1965), cert. denied, 384 U.S. 951, 86 S. Ct. 1570, 16 L. Ed. 2d 547 (1966).

Cited in *Stephens v. Hammersley*, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976); *Oxereok v. State*, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

II. SELECTION PROCEDURE.

Constitutionality. — Section 3, ch. 117, SLA 1967, does not violate the provisions of Alaska Const., art. IV, § 4. *Delahay v. State*, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970), appeal dismissed, 402 U.S. 901, 91 S. Ct. 1381, 28 L.Ed.2d 642 (1971).

The selection procedure enacted into law by this section follows the constitutional scheme of Alaska Const., art. IV, § 5, for appointment of supreme court justices and superior court judges. *Delahay v. State*, Sup. Ct. Op. No. 648 (File No. 1252), 476



alaska judicial council

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January 28, 1985

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Representative Mike Miller
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

CHAIRMAN, EX OFFICIO
Jay A. Rabinowitz
Chief Justice
Supreme Court

Dear Representative Miller:

Identical provisions of AS 22.05.080(b); 22.07.070(b); 22.10.100(b); and 22.15.170(e) require the Judicial Council to meet within 45 days of the occurrence of actual vacancies in the offices of justice of the supreme court or judge of the court of appeals, superior court or district court to submit nominations to the governor to fill such vacancies. While this 45 day selection period was deemed adequate at the time such provisions were originally enacted, the Council's adoption of bar survey, investigation, interview and related procedures in recent years has rendered compliance with the 45 day requirement nearly impossible. Although the statutes provide a mechanism for obtaining an extension of the deadline upon request, an extension is realistically required in every case. (Attached is a summary of current Judicial Council selection procedures, including an estimate of the minimum number of days currently required, i.e., 70-93, to fill judicial vacancies.)

Therefore, the Judicial Council hereby formally requests that the House Judiciary Committee consider an amendment to the above four statutes changing the 45 day period to a 90 day period. In each of these four sections, the same change would be required and would appear twice, to-wit:

"....the judicial council shall meet within [45] 90 days and submit to the governor the names of two or more persons qualified for the judicial office; except that this [45] 90-day period may be extended by the council with the concurrence of the supreme court."

Page Two
Rep. Mike Miller
January 28, 1985

Recently, the House Judiciary Committee introduced House Bill 116 by request of the Chief Justice to amend certain other provisions of the same four statutes to conform the language of such statutes to the language of the Alaska Constitution. Because that bill is already before your Committee, we would hope that this proposed further amendment to the same four sections requested by the Council could be considered by your Committee at the same time House Bill 116 is considered. I would be happy to appear in person or by teleconference at that time to testify in support of these proposed amendments.

Thank you in advance for your consideration of our request. If further information is required, please let me know.

Sincerely,



FRANCIS L. BREMSON
EXECUTIVE DIRECTOR

FB/kf

Enclosure

cc: Senate Judiciary Committee
House Judiciary Committee
Judicial Council
Roger Lewis
Hayden Kaden
Art Snowden
Karla Forsythe

JUDICIAL SELECTION PROCEDURES
OF THE ALASKA JUDICIAL COUNCIL

The Alaska Judicial Council is a constitutionally created state agency which evaluates the applications of persons seeking judicial appointment and refers the names of at least two qualified applicants to the Governor for appointment to fill existing or impending vacancies. The following is a brief summary of the judicial selection process--the steps which an applicant must take in order to be considered for a judicial appointment and the steps which are taken by the Judicial Council to insure that applicants are qualified for such appointment.

A. The Application Process

Applicants must first complete the Judicial Council's "Application for Judicial Appointment," which consists of a questionnaire form and two appendices. These appendices request: (1) a physician's certification of the applicant's good health based upon the results of a complete physical examination, preferably one conducted within one year prior to the date of application; or if this is not possible, a certification from the physician who conducted the most recent complete physical examination of the applicant; and (2) a legal writing sample of 5 to 10 pages in length, prepared solely by the applicant within the past five years.

Applicants must submit eight copies of the completed application and appendices to the Judicial Council on or by the date set forth in the notice of vacancy.

Applicants are also encouraged to review the Code of Judicial Conduct (Alaska Rules of Court, Vol. III) during the evaluation process period.

B. The Evaluation Process

Once the application deadline has passed, the Judicial Council begins its evaluation process.

1) The Bar Poll

The Judicial Council sends the names of all applicants to an independent organization, Policy Analysts, Ltd. (PAL) which prepares a survey to be sent to all active members of the Alaska Bar Association. The Bar Survey asks Bar members to rate each candidate on a five point scale [1 (Poor) to 5 (Excellent)] on 11 qualities, including "legal reasoning ability and knowledge of the law" and "integrity", and also asks respondents to rate each candidate as a potential "Good Judge". Survey respondents are asked to indicate whether their numerical ratings are based upon direct professional experience, other personal contacts or reputation; respondents may also decline to evaluate any candidate due to insufficient knowledge. Respondents are invited to offer narrative comments as well.

Survey responses are returned directly to PAL, which prepares a statistical analysis of all survey responses, including average ratings for each quality for each candidate by range (i.e., excellent, good, acceptable, deficient, poor). Although respondents do not rate candidates in comparison to each other, PAL does prepare an analysis showing relative quantitative rankings among candidates (e.g., 2nd highest average "Good Judge" or "11-item scale" rating out of 10 candidates). (PAL also collates all comments and forwards these in a separate, confidential report to the Council.)

After all applicants have been notified of the survey results, the survey report is released to the public. Survey results are used by the Council members in the evaluative process and each applicant has the opportunity to discuss the survey results with the Council during the interview. [See below, (5)]

2) Letters of Reference

Letters of reference are also considered by the Council in its evaluative process. Reference letters are treated as confidential and may not be viewed by the applicants.

3) Investigation of Applicants

The Council may verify applicants' educational and employment history and investigate medical, criminal, legal civil, credit and professional discipline history. Supreme Court Order 489, effective January 4, 1982, authorizes the Council to review bar applications and bar discipline records. During the course of its investigation the Judicial Council may also seek information on candidate qualifications from such other public or private groups or individuals as may be deemed appropriate. Information gathered during the Council's investigation is treated as confidential and is used only for the purpose of evaluating fitness for judicial appointment.

4) Screening

Following its review of the applications, investigative and survey data, the Council schedules candidate interviews. As a general rule, the Council prefers to interview all candidates; however, the Council may decline to interview any candidate whom it finds to be unqualified. The Council may also decide not to interview candidates who have been recently interviewed for other vacancies, where the Council believes it has sufficient information upon which to base its evaluations. The Council will ultimately review and vote on the qualifications of all applicants, whether or not interviewed.

5) Interviews

The final stage of the evaluation process is a 1/2 hour applicant interview with the full Council. Applicants invited to interview are asked about their judicial philosophy and are given an opportunity to respond to or explain any ratings, reference letters or other information gathered during the investigation.

Following these interviews, the Council submits a panel of nominees to the Governor of those candidates deemed most qualified, provided such panel includes two or more names. (If fewer than two applicants are deemed to be qualified, the Council will decline to submit any names and will re-advertise for the vacancy). Thereafter, the applicants are notified and the Council's nominations are made public. The Governor then has 45 days to appoint a nominee from the list to fill the judicial vacancy.

C. Timing of Judicial Selection Procedures

From the time the Council receives notice of a vacancy to the final applicant interviews, the judicial selection process takes a minimum of 10 weeks. Once the names of the nominees have been submitted, the Governor has up to 45 days to appoint.

The outline below describes the timing of the major procedures followed during the judicial selection process:

1) Written notice of the vacancy is received by the Council. (Day 1).

2) Within 3 days, the position is announced to all members of the Bar Association and the application process begins. (Day 4).

3) The deadline for receiving applications is approximately three weeks after the announcement of the position. (Day 25). The deadline for filing for the current vacancy is January 25, 1985.

4) The names and biographies of applicants are made public immediately after the filing deadline. (Day 25)

5) The Judicial Council begins its investigation process, requesting letters of reference, disciplinary histories for each applicant, and such other records as may be deemed appropriate. (Day 25).

6) The Bar Poll is mailed out to all members of the state Bar within three days. (Day 28).