

CSHB

139

SENATE COMMITTEE REPORT

FURTHER:

4/24/87

DATE TURNED INTO OFFICE 5/14/87

Mr. President:

FINANCE Committee considered CSHB 139(Jud) am

jurisdiction of the superior and district courts; judicial disqualification, disciplinary actions, and impeachment; the procedure for judicial retirement due to incapacity or disability; proceedings before magistrates; and amending Rule 16(a), Alaska District Court Rules of Civil Procedure.

and recommended:

replace with CS FOR _____) same title
 or adopt _____ CS FOR _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous
 zero fiscal impact

MEMBERS SIGNING DO PASS

Rich Lee
W. Kennedy

OTHER RECOMMENDATIONS

Paul O. Shantz (Noted)
Paul Shantz (Noted)
Jim Duncan (Noted)

John B. ... No RSC.
Chairman signature and recommendation

Committee Backup Attached

Bill Version: CSHB 139(Jud)
Publish Date: HOUSE 3/11/87

REQUEST: _____

Revision Date:
Title: Jurisdiction of superior and
district courts, qualifications...
Sponsor: Gruenberg, Sund, Pettyjohn...
Requestor: House Judiciary Committee

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)						
OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL
REVENUE

FUNDING: (Thousands of Dollars)						
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System
Approved by: *Stephanie J. Cole* Stephanie J. Cole, Deputy Director
Agency: Alaska Court System

Phone: 264-8228
Date: 2-19-87
Date: 2-19-87

- Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

Original sponsors: Gruenberg, Sund,
Pettyjohn, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 139 (Judiciary) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL
6 For an Act entitled: "An Act relating to the jurisdiction of the superior
7 and district courts; judicial disqualification,
8 disciplinary actions, and impeachment; the procedure
9 for judicial retirement due to incapacity or disabili-
10 ty; proceedings before magistrates; and amending
11 Rule 16(a), Alaska District Court Rules of Civil
12 Procedure."

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

14 * Section 1. AS 09.30.200 is amended to read:

15 Sec. 09.30.200. FILING AND STATUS OF FOREIGN JUDGMENTS. A copy
16 of a foreign judgment authenticated in accordance with the Act of
17 Congress or the laws of this state may be filed in the office of the
18 clerk of the [SUPERIOR] court with jurisdiction in [OF] this state.
19 The clerk shall treat the foreign judgment in the same manner as a
20 domestic judgment [OF THE SUPERIOR COURT]. A judgment so filed has
21 the same effect and is subject to the same procedures, defenses, and
22 proceedings for reopening, vacating, or staying as a domestic judgment
23 [OF THE SUPERIOR COURT] and may be enforced or satisfied in like
24 manner.

25 * Sec. 2. AS 09.30.220 is amended to read:

26 Sec. 09.30.220. STAY. (a) If the judgment debtor shows the
27 [SUPERIOR] court that an appeal from the foreign judgment is pending
28 or will be taken, or that a stay of execution has been granted, the
29 court shall stay enforcement of the foreign judgment until the appeal

1 is concluded, the time for appeal expires, or the stay of execution
2 expires or is vacated, upon proof that the judgment debtor has fur-
3 nished the security for the satisfaction of the judgment required by
4 the state in which it was rendered.

5 (b) If the judgment debtor shows the [SUPERIOR] court any ground
6 upon which enforcement of a judgment of the [SUPERIOR] court of this
7 state would be stayed, the court shall stay enforcement of the foreign
8 judgment for an appropriate period, upon requiring the same security
9 for satisfaction of the judgment that [WHICH] is required in this
10 state.

11 * Sec. 3. AS 09.30.230 is amended to read:

12 Sec. 09.30.230. FEES. A person filing a foreign judgment shall
13 pay to the clerk of court the fee prescribed for the filing of an
14 action. Fees for docketing, transcription, or other enforcement
15 proceedings shall be as provided for domestic judgments [OF THE SUPE-
16 RIOR COURT OF THIS STATE].

17 * Sec. 4. AS 09.43.170 is amended to read:

18 Sec. 09.43.170. COURT, JURISDICTION. In AS 09.43.010 - 09.43.-
19 180, the term "court" means the [SUPERIOR] court with jurisdiction in
20 [OF] this state. The making of an agreement described in AS 09.43.010
21 providing for arbitration in this state confers jurisdiction on the
22 [SUPERIOR] court to enforce the agreement under AS 09.43.010 - 09.43.-
23 180 and to enter judgment on an award under the agreement.

24 * Sec. 5. AS 15.58.050 is amended to read:

25 Sec. 15.58.050. INFORMATION AND RECOMMENDATIONS ON JUDICIAL
26 OFFICERS. No later than August 7 of the year in which the state
27 general election will be held, the judicial council shall file with
28 the lieutenant governor a statement including information about each
29 supreme court justice, court of appeals judge, superior court judge,

1 and district court judge who will be subject to a retention election.
2 The statement shall reflect the evaluation of each justice or judge
3 conducted by the judicial council according to law and shall contain a
4 brief statement describing each public reprimand, public censure, or
5 suspension received by the judge under AS 22.30.011(d)(3) or (4)
6 during the period covered in the evaluation. A statement may not
7 exceed 600 words.

8 * Sec. 6. AS 22.07 is amended by adding a new section to read:

9 Sec. 22.07.075. IMPEACHMENT. A judge of the court of appeals is
10 subject to impeachment by the legislature for malfeasance or mis-
11 feasance in the performance of official duties. Impeachment must
12 originate in the senate and must be approved by two-thirds vote of its
13 members. The motion for impeachment must list fully the basis for the
14 proceeding. Trial on impeachment shall be conducted by the house of
15 representatives. A supreme court justice designated by the court
16 shall preside at the trial. Concurrence of two-thirds of the members
17 of the house is required for a judgment of impeachment. The judgment
18 may not extend beyond removal from office, but does not prevent pro-
19 ceedings in a court on the same or related charges.

20 * Sec. 7. AS 22.15.030(a) is amended to read:

21 (a) The district court has jurisdiction of civil cases, includ-
22 ing foreign judgments filed under AS 09.30.200 and arbitration pro-
23 ceedings under AS 09.43.170, as follows:

24 (1) for the recovery of money or damages when the amount
25 claimed exclusive of costs, interest, and attorney fees does not
26 exceed \$35,000 [\$25,000];

27 (2) for the recovery of specific personal property, when
28 the value of the property claimed and the damages for the detention do
29 not exceed \$35,000 [\$25,000];

1 (3) for the recovery of a penalty or forfeiture, whether
2 given by statute or arising out of contract, not exceeding \$35,000
3 [\$25,000];

4 (4) to give judgment without action upon the confession of
5 the defendant for any of the cases specified in this section, except
6 for a penalty or forfeiture imposed by statute;

7 (5) for establishing the fact of death of any person in the
8 manner prescribed in AS 09.55.020 - 09.55.060;

9 (6) for the recovery of the possession of premises in the
10 manner provided under AS 09.45.070 - 09.45.160 when the value [OF THE
11 PROPERTY OR] of the arrears and damage to the property does not exceed
12 \$35,000 [\$25,000];

13 (7) for the foreclosure of a lien when the amount in con-
14 troversy does not exceed \$35,000 [\$25,000];

15 (8) for the recovery of money or damages in motor vehicle
16 tort cases when the amount claimed exclusive of costs, interest and
17 attorney fees does not exceed \$35,000 [\$25,000];

18 (9) over civil actions for taking utility service and for
19 damages to or interference with a utility line filed under AS 42.20.-
20 030;

21 (10) over cases involving injunctive relief for domestic
22 violence under AS 25.35.010 and 25.35.020.

23 * Sec. 8. AS 22.15.120 is amended to read:

24 Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY
25 HEAR. A magistrate shall preside only in cases and proceedings under
26 AS 22.15.040, 22.15.100, and 22.15.110, and as follows,

27 (1) for the recovery of money or damages only when the
28 amount claimed, exclusive of costs, interest, and attorney fees, does
29 not exceed \$5,000;

1 (2) for the recovery of specific personal property when the
2 value of the property claimed and the damages for the detention do not
3 exceed \$5,000;

4 (3) for the recovery of a penalty or forfeiture, whether
5 given by statute or arising out of contract, not exceeding \$5,000;

6 (4) to give judgment without action upon the confession of
7 the defendant for any of the cases specified in this section, except
8 for a penalty or forfeiture imposed by statute;

9 (5) to give judgment of conviction upon a plea of guilty by
10 the defendant in a criminal proceeding within the jurisdiction of the
11 district court;

12 (6) to hear, try, and enter judgments in all cases involv-
13 ing misdemeanors, if the defendant consents in writing that the magis-
14 trate may try the case;

15 (7) to hear, try and enter judgments in all cases involving
16 infractions under AS 28, violations under AS 11, and violations of
17 ordinances of political subdivisions;

18 (8) for the extradition of fugitives as authorized under
19 AS 12.70.

20 * Sec. 9. AS 22.15 is amended by adding a new section to read:

21 Sec. 22.15.205. IMPEACHMENT. A district judge is subject to
22 impeachment by the legislature for malfeasance or misfeasance in the
23 performance of official duties. Impeachment must originate in the
24 senate and must be approved by two-thirds vote of its members. The
25 motion for impeachment must list fully the basis for the proceeding.
26 Trial on impeachment shall be conducted by the house of representa-
27 tives. A supreme court justice designated by the court shall preside
28 at the trial. Concurrence of two-thirds of the members of the house
29 is required for a judgment of impeachment. The judgment may not

1 extend beyond removal from office, but does not prevent proceedings in
2 the courts on the same or related charges.

3 * Sec. 10. AS 22.20.020(a) is repealed and reenacted to read:

4 (a) A judicial officer may not act in a matter in which

5 (1) the judicial officer is a party;

6 (2) the judicial officer is related to a party or a party's
7 attorney by consanguinity or affinity within the third degree;

8 (3) the judicial officer is a material witness;

9 (4) the judicial officer or the spouse of the judicial
10 officer, individually or as a fiduciary, or a child of the judicial
11 officer has a direct financial interest in the matter;

12 (5) a party, except the state or a municipality of the
13 state, has retained or been professionally counseled by the judicial
14 officer as its attorney within two years preceding the assignment of
15 the judicial officer to the matter;

16 (6) the judicial officer has represented a person as attor-
17 ney for the person against a party, except the state or a municipality
18 of the state, in a matter within two years preceding the assignment of
19 the judicial officer to the matter;

20 (7) an attorney for a party has represented the judicial
21 officer or a person against the judicial officer, either in the judi-
22 cial officer's public or private capacity, in a matter within two
23 years preceding the filing of the action;

24 (8) the law firm with which the judicial officer was asso-
25 ciated in the practice of law within the two years preceding the
26 filing of the action has been retained or has professionally counseled
27 either party with respect to the matter;

28 (9) the judicial officer feels that, for any reason, a fair
29 and impartial decision cannot be given.

1 * Sec. 11. AS 22.20.020(b) is repealed and reenacted to read:

2 (b) A judicial officer shall disclose, on the record, a reason
3 for disqualification specified in (a) of this section at the commence-
4 ment of a matter in which the judicial officer participates. The
5 disqualifications specified in (a)(2), (a)(5), (a)(6), (a)(7), and
6 (a)(8) of this section may be waived by the parties and are waived
7 unless a party raises an objection.

8 * Sec. 12. AS 22.25.010(b) is amended to read:

9 (b) A justice or judge may be retired for incapacity as provided
10 in this section [BY LAW]. A justice or judge is eligible for retire-
11 ment pay with two or more years of service at the time of retirement
12 for incapacity. The effective date of retirement under this subsec-
13 tion is the first day of the month coinciding with or after the date
14 that [UPON WHICH] the governor [WITH RESPECT TO A JUSTICE, OR THE
15 SUPREME COURT WITH RESPECT TO A JUDGE] files written notice with the
16 commissioner of administration [A WRITTEN DECLARATION TO THE EFFECT]
17 that a designated justice or judge was retired for incapacity. A
18 duplicate copy of the notice [DECLARATION] shall be filed with the
19 Judicial Council.

20 * Sec. 13. AS 22.30.011 is amended by adding a new subsection to read:

21 (h) If a judge has been publicly reprimanded, suspended, or
22 publicly censured under this section and the judge has filed a decla-
23 ration of candidacy for retention in office, the commission shall
24 report to the Judicial Council for inclusion in the statement filed by
25 the judicial council under AS 15.58.050 each public reprimand, sus-
26 pension, or public censure received by the judge

27 (1) since appointment; or

28 (2) if the judge has been retained by election, since the
29 last retention election of the judge.

1 * Sec. 14. AS 22.30.070(c) is amended to read:

2 (c) On recommendation of the commission or after an appeal under
3 AS 22.30.011(e), the supreme court may (1) retire a judge for dis-
4 ability that seriously interferes with the performance of duties and
5 that is or may become permanent, and (2) publicly or privately censure
6 or remove a judge for action occurring not more than six years before
7 the commencement of the judge's current term which constitutes wilful
8 misconduct in the office, wilful and persistent failure to perform
9 duties, habitual intemperance, conduct prejudicial to the adminis-
10 tration of justice, or conduct that brings the judicial office into
11 disrepute. The effective date of retirement under (1) of this sub-
12 section is the first day of the month coinciding with or after the
13 date that the supreme court files written notice with the commissioner
14 of administration that the judge was retired for disability. A dupli-
15 cate copy of the notice shall be filed with the Judicial Council.

16 * Sec. 15. Rule 16(a) of the Alaska District Court Rules of Civil
17 Procedure is amended to read:

18 (a) All small claims actions shall be tried by the court without
19 a jury. A judge may [NOT] be peremptorily challenged either under
20 Civil Rule 42(c) or AS 22.20.022.

MEMORANDUM

DATE: March 18, 1987

TO: House Finance Committee

FROM: Max F. Gruenberg, Jr.

RE: Sectional analysis of the Judiciary Committee
Substitute for the Impeachment of Judges Bill, C.S.
for HB139 (Judiciary)

Secs. 1, 2 and 3

AS 09.30.200, .220 and .230 Foreign judgments are now enforceable only in superior court. The bill allows foreign judgments up to \$35,000 to be enforceable in district court.

Sec. 4

AS 09.43.170 The Uniform Arbitration Act is now only enforceable in superior court. The bill allows arbitrations up to \$35,000 to be enforceable in district court.

Sec. 5

AS 15.58.050 Requires that the judicial council include all public reprimands, public censures and suspensions in its report on a judge or justice who is up for a retention election.

Sec. 6

AS 22.07.075 Provides for the impeachment of court of appeals judges. It uses the identical language of AS 22.05.120 and AS 22.10.170, which now provide for the impeachment of supreme court justices and superior court judges. This was part of HB 516, which passed the House last year.

Sec. 7

AS 22.15.030(a) Raises district court jurisdiction from \$25,000.00 to \$35,000.00 and clarifies the requirements for district court jurisdiction over evictions. The \$35,000 limit was passed as part of the tort reform bill, SB 377, which passed the House last year, but did not survive the conference committee.

Sec. 8

AS 22.15.120 Brings criminal violations within the jurisdiction of magistrate courts.

Sec. 9

AS 22.15.205 Provides for the impeachment of district court judges. See section 6 above. This was part of the bill last year.

Secs. 10 & 11

AS 22.20.020(a) and (b) Revises and updates the statute for disqualifying a judge for cause. This was part of HB 516 last year.

Sec. 12

AS 22.25.010(b) and 22.30.070(c) Clarifies the procedure for judicial retirement for incapacity.

Sec. 13

AS 22.30.011 Provides that the Commission on Judicial Qualifications shall report public reprimands, public censures and suspensions to the judicial council so that the council can comply with AS 15.58.050, Sec. 5 above.

Sec. 14

AS 22.30.070(c) Clarifies the procedure for judicial retirement for disability.

Sec. 15

Alaska District Court Civil Rule 16(a). Allows a person in small claims court to change judges by filing one preemptory challenge against the assigned judge. All other litigants presently have this right.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

4/2/87

DATE TURNED INTO OFFICE _____

Mr. President:

JUDICIARY

Committee considered _____

CSHB 139(Jud) am

jurisdiction of the superior and district courts; judicial disqualification, disciplinary actions, and impeachment; the procedure for judicial retirement due to incapacity or disability; proceedings before magistrates; and amending Rule 16(a), Alaska District Court Rules of Civil Procedure.

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
passed zero *previous* fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Rick Halford
Artis Fungulinski
Joe P. Joseph
Patrick Kadey

K. Kadey do pass
Chairman signature and recommendation

Committee Backup Attached