

SB

159



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Memorandum

To: Senator Gene Therriault, Chair Senate State Affairs
From: Senator Dave Donley *DD*
Date: March 13, 2002 *SB 159*
Re: SB 151 - "An Act relating to retention elections for judges of the court of appeals."

I have attached a list prepared by my office regarding the average terms for Alaskan judicial officers compared with those of other states.

The Alaska Judicial Council (AJC) opposes shortening judges' retention terms to four years as proposed in Senate Bill 159. One of their arguments is that Alaska's current retention terms are in line with retention terms in other merit selection states. In fact, Alaska's terms are currently longer than the average in those states using the merit system solely. In addition, several merit system states whose judges serve terms longer than ours require legislative confirmation of their appointees ensuring public input before an individual becomes a judge.

In Alaska, our only opportunity to assess a judge's performance is during retention elections. By shortening the length of time between elections, we will ensure public accountability of our justice system.

DD/kk

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ALASKA COURT SYSTEM
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March 28, 2002

The Honorable Gene Therriault
Chairman, Senate State Affairs Committee
State Capitol, Room 121
Juneau, Alaska 99811

Re: SB 159, "An Act relating to retention elections for judges of the court of appeals."

Dear Senator Therriault:

Last session, the Senate State Affairs Committee held a hearing on SB 159. This legislation proposes reducing the time between retention elections for judges of the court of appeals from 8 years to 4 years. At the hearing, the bill's sponsor stated that the retention term of judges of the Alaska Court of Appeals is longer than the average retention term in other states, thus justifying the reduction. In support of this claim, the sponsor provided the committee with a list of states and their retention terms. A member of the sponsor's staff apparently compiled this list. Unfortunately, as was pointed out during the hearing, the list contained a number of errors that affected the result. For example, while there are 39 states that have intermediate appellate courts, the sponsor's aide only listed 32. When the errors are corrected, the 8-year retention term for judges of the Alaska Court of Appeals is essentially identical to the average term of office for intermediate appellate courts in other states. The average for all other states is 7.8 years.

The information on judicial retention and terms of office contained in this letter is based on information collected by the National Center for State Courts (NCSC) and the American Judicature Society (AJS). When the sponsor's data conflicted with information provided by the NCSC and the AJS, I reviewed the applicable statutes to confirm the accuracy of the information. In each case, the NCSC and AJS information proved to be correct. The AJS source data is attached.

For purposes of appointment of judges of intermediate appellate courts, there are two categories of states: those that use some variation of the merit system (18 states), and those that use a non-merit based selection method, either discretionary gubernatorial appointment, discretionary legislative appointment, or contested elections (21 states). The 39 states, and their correct retention terms, are as follows:

Merit Selection States:

Alaska	8
Arizona	6
Colorado	8
Connecticut	8
Florida	6
Hawaii	10
Indiana	10
Iowa	6
Kansas	4
Maryland	10
Massachusetts	15*
Missouri	12
Nebraska	6
New Mexico	8
New York	5
Oklahoma	6
Tennessee	8
Utah	6
Average Term:	7.9
(not including Alaska)	

Non-Merit Selection States:

Alabama	6
Arkansas	8
California	12
Georgia	6
Idaho	6
Illinois	10
Kentucky	8
Louisiana	10
Michigan	6
Minnesota	6
Mississippi	8
New Jersey	15*
North Carolina	8
Ohio	6
Oregon	6
Pennsylvania	10
South Carolina	6
Texas	6
Washington	6
Wisconsin	6
Virginia	8
Average Term:	7.8

Average Term of All States: 7.8
 (not including Alaska)

* Actual term is "until age 70;" this is assumed to be 15 years for calculating the average.

The specific inaccuracies contained in the sponsor's documentation are as follows:

1. The documentation listed Alabama as a state in which the term of office for appellate court judges is 8 years. It is actually 6 years.

2. The documentation did not list California. The judges of the California Courts of Appeal are appointed by a non-merit gubernatorial selection. Their term of office is 12 years.
3. The documentation did not list Connecticut. The judges of the Connecticut Appellate Court are appointed by merit selection through a nominating commission. Their term of office is 8 years.
4. The documentation listed Massachusetts, but left the term of office blank and did not figure it into the average. The judges of the Massachusetts Appeals Court are appointed by merit selection through a nominating commission. Their term of office is "until age 70," the longest term in the nation. If applied to the Alaska Court of Appeals, the three incumbent judges would each have terms of over 20 years. Because of this, because the full vesting period of the Judicial Retirement System is 15 years, and because most judges serve at least that long, this letter assumes that Massachusetts has a term of 15 years for purposes of calculating the average.
5. The documentation did not list New Jersey. The judges of the Appellate Division of the Superior Court are appointed by a non-merit gubernatorial selection. Their retention term is "until age 70". Along with Massachusetts, this is the longest retention term in the nation. This letter assumes that New Jersey has a retention term of 15 years for purposes of calculating the average.
6. The documentation did not list New York. The judges of the Appellate Division of the Supreme Court are appointed from the trial court of general jurisdiction by merit selection through a nominating commission. Their term of office as appellate judges is five years. However, their underlying term of office as trial court judges is 14 years. For purposes of calculating the average, this letter assumes that their term of office is 5 years.
7. The documentation did not list South Carolina. The judges of the South Carolina Court of Appeals are appointed by merit selection through a nominating commission. Their term of office is 6 years.
8. The documentation listed Tennessee as a state in which the appellate court judges are elected. In fact, these judges are appointed by merit selection through a nominating commission.
9. The documentation listed Utah as a state in which the retention term of office for judges of the Utah Court of Appeals is 10 years. It is actually 6 years.

The Honorable Gene Therriault
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10. The documentation did not list Virginia. The judges of the Virginia Court of Appeals are appointed by a non-merit legislative selection. Their term of office is 8 years.

CONCLUSION

The sponsor stressed the importance of reducing the term of office of the judges of the Alaska Court of Appeals because their current retention term was believed to be longer than the national average. In fact, their current retention term (8 years) is essentially identical to the national average for all other states (7.8 years). Broken down, it is also essentially identical to the average for both merit-selection states (7.9 years) and non-merit selection states (7.8 years).

Like the sponsor, the framers of the Alaska Constitution thought it was important that the retention terms of Alaska's appellate judges reflect the national average. The minutes of the Constitutional Convention show that the retention term for the supreme court (10 years) was selected because it was the average retention term for supreme court justices in other states. A motion to reduce the term from 10 to 6 years failed on an 11 - 42 vote. I Proceedings of the Alaska Constitutional Convention 611 (December 5, 1955).

I urge you to keep the retention term for the court of appeals at its current length. Please advise if you have any additional questions.

Very truly yours,



C. S. Christensen III
Deputy Administrative Director

Attachment



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Alaska's Judges Have Longer Terms and Less Public Accountability Than 47 Other States

Alaska's judicial officers, on average, serve longer terms and have less public accountability than judges in forty-seven other states. The vast majority of the states exercise more public control in two ways; judges are elected by the public and the average terms are shorter than in Alaska. In the seven states with a combination of merit system appointment and elections, the average terms of all levels of judicial officers are less than Alaska. In the five states with a combination of merit system appointment and confirmation by a legislative body, the average terms are longer but this is mitigated by the requirement for legislative confirmation. In the only seven other pure merit system states, judicial terms are shorter on average for appellate and supreme courts. With only two exceptions (Colorado and Utah), Alaska's judicial officers serve longer terms with less public accountability than in any other place in the nation.

Average Terms for Judges Using Various Systems of Selection and Retention

STATE	SUPERIOR	APPELLATE	SUPREME
Alaska	6	8	10
The following terms are for the seven states that, similar to Alaska, use the Merit System solely:			
Colorado	6	8	10
Florida	6	6	6
Iowa	6	6	8
Massachusetts	---	---	---
Nebraska	6	6	6
Utah	6	10	10
Wyoming	6	---	8
Average No. of Years	6	7.2	8

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Average Terms for Judges Using Various Systems of Selection and Retention

There are seven states that use a mixture of systems, including the Merit System and either partisan or nonpartisan elections. Their data is as follows:

STATE	SUPERIOR	APPELLATE	SUPREME
Arizona	4	6	6
Indiana	6	10	10
Kansas	4	4	6
Missouri	6	12	12
New Mexico	6	8	8
Oklahoma	4	6	6
South Dakota	8	---	8
Average No. of Years	5.4	7.7	8

There are five states that use the Merit System, but the Senate confirms appointments. Their data is as follows:

Delaware	12	---	12
Hawaii	---	10	10
Maryland	---	10	10
Vermont	6	---	6
District of Columbia	15	---	15
Average No. of Years	11	10	10.6

The following are the terms for those states that elect their judicial officers either through partisan or nonpartisan ballots:

Alabama	6	8	6
Arkansas	4	8	8
Georgia	4	6	6
Idaho	4	6	8
Illinois	6	10	10
Kentucky	8	8	8
Louisiana	6	10	10
Michigan	6	6	8
Minnesota	6	6	6
Mississippi	4	8	8
Montana	6	---	8
Nevada	6	---	6
North Carolina	8	8	8
North Dakota	6	---	10
Ohio	6	6	6


Average Terms for Judges Using Various Systems of Selection and Retention

Oregon	6	6	6
Pennsylvania	10	10	10
Tennessee	8	8	8
Texas	4	6	6
Washington	4	6	6
West Virginia	8	---	12
Wisconsin	6	6	10
Average No. of Years	6	6	8

--- / Court does not exist in jurisdiction or not applicable

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AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA
HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA
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NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX
UT	VT	VA	WA	WV	WI	WY				

ALABAMA

Supreme Court

Elective System: Partisan Election

Initial Term of Office: 6 Years

Method of Retention: Re-election (6 year term)

Court of Civil Appeals

Elective System: Partisan Election

Initial Term of Office: 6 Years

Method of Retention: Re-election (6 year term)

Court of Criminal Appeals

Elective System: Partisan Election

Initial Term of Office: 6 Years

Method of Retention: Re-election (6 year term)

Circuit Court*

Elective System: Partisan Election
Initial Term of Office: 6 Years
Method of Retention: Re-election (6 year term)

*[Compiler's Note: Four counties in Alabama use a judicial nominating commission only to fill midterm vacancies on the Circuit Court.]

ALASKA

Supreme Court

Appointive System: Merit Selection through Nominating Commission
Initial Term of Office: 3 Years
Method of Retention: Retention Election (10 year term)

Court of Appeals

Appointive System: Merit Selection through Nominating Commission
Initial Term of Office: 3 Years
Method of Retention: Retention Election (8 year term)

Superior Court

Appointive System: Merit Selection through Nominating Commission
Initial Term of Office: 3 Years
Method of Retention: Retention Election (6 year term)

ARIZONA

Supreme Court

Appointive System: Merit Selection through Nominating Commission
Initial Term of Office: 2 Years
Method of Retention: Retention Election (6 year term)

Court of Appeals

Appointive System: Merit Selection through Nominating Commission
Initial Term of Office: 2 Years
Method of Retention: Retention Election (6 year term)

Superior Court (county pop. greater than 250,000—Pima & Maricopa counties only)

Appointive System: Merit Selection through Nominating Commission
Initial Term of Office: 2 Years
Method of Retention: Retention Election (4 year term)

Superior Court (county pop. less than 250,000)

Elective System: Non-Partisan Election
Initial Term of Office: 4 Years
Method of Retention: Re-election (4 year term)

ARKANSAS

Supreme Court

Elective System: Non-Partisan Election
Initial Term of Office: 8 Years
Method of Retention: Re-election for additional 8 year terms

Court of Appeals

Elective System: Non-Partisan Election
Initial Term of Office: 8 Years
Method of Retention: Re-election for additional 8 year terms

Circuit Court

Elective System: Non-Partisan Election
Initial Term of Office: 4 Years
Method of Retention: Re-election for additional 4 year terms

Chancery Court and Probate Court*

Elective System: Non-Partisan Election
Initial Term of Office: 6 Years
Method of Retention: Re-election for additional 6 year terms

*[Compiler's Note: Combination judges for circuit/chancery serve for 4 year terms.]

CALIFORNIA**Supreme Court**

Appointive System: Gubernatorial Appointment without Nominating Commission

Initial Term of Office: 12 Years

Method of Retention: Retention Election (12 year term)

Courts of Appeal

Appointive System: Gubernatorial Appointment without Nominating Commission

Initial Term of Office: 12 Years

Method of Retention: Retention Election (12 year term)

Superior Court

Elective System: Non-Partisan Election*

Initial Term of Office: 6 Years

Method of Retention: Nonpartisan Election (6 year term)**

*[Compiler's Note: The California constitution provides that local electors may choose gubernatorial appointments instead of nonpartisan election to select superior court judges. As of June 2000, no counties have chosen gubernatorial appointments.]

**[Compiler's Note: If the election is uncontested, the incumbent's name does not appear on the ballot.]

COLORADO**Supreme Court**

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: 2 Years

Method of Retention: Retention Election (10 year term)

Court of Appeals

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: 2 Years

Method of Retention: Retention Election (8 year term)

District Court

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: 2 Years

Method of Retention: Retention Election (6 year term)

CONNECTICUT**Supreme Court**

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: 8 Years

Method of Retention: Commission reviews incumbent's performance

on noncompetitive basis; governor renominates and legislature confirms

Appellate Court

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: 8 Years

Method of Retention: Commission reviews incumbent's performance

on noncompetitive basis; governor renominates and legislature confirms

Superior Court

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: 8 Years

Method of Retention: Commission reviews incumbent's performance

on noncompetitive basis; governor renominates and legislature confirms

DELAWARE*

Supreme Court*Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 12 Years*Method of Retention:* ****Court of Chancery***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 12 Years*Method of Retention:* ****Superior Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 12 Years*Method of Retention:* **

*[Compiler's Note: Merit Selection established by executive order in Delaware, Maryland, Massachusetts, and New Hampshire. In all other jurisdictions merit selection established by constitutional or statutory provision.]

**[Compiler's Note: Incumbent reapplies to nominating commission and competes with other applicants for nomination to the governor. The governor may reappoint the incumbent or another nominee. The Senate confirms the appointment.]

DISTRICT OF COLUMBIA**Court of Appeals***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 15 Years*Method of Retention:* Reappointment by judicial tenure commission***Superior Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 15 Years*Method of Retention:* Reappointment by judicial tenure commission*

[Compiler's Note: Initial appointment is made by the President of the United States and confirmed by the Senate. Three months prior to the expiration of the term of office, the judge's performance is reviewed by the tenure commission. Those found "Exceptionally Well Qualified" or "Well Qualified" are automatically reappointed. If a judge is found to be "Qualified" the President may nominate the judge for an additional term (subject to Senate confirmation). If the President does not wish to reappoint the judge, the District of Columbia Nomination Commission compiles a new list of candidates.]

FLORIDA**Supreme Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 1 Year*Method of Retention:* Retention Election (6 year term)**District Court of Appeal***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 1 Year*Method of Retention:* Retention Election (6 year term)**Circuit Court***Elective System:* Non-Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**GEORGIA*****Supreme Court***Elective System:* Non-Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**Court of Appeals***Elective System:* Non-Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**Superior Court**

Elective System: Non-Partisan Election
Initial Term of Office: 4 Years
Method of Retention: Re-election for additional 4 year terms

*[Compiler's Note: Georgia uses a judicial nominating commission to fill midterm vacancies on all levels of court.]

HAWAII

Supreme Court

Appointive System: Merit Selection through Nominating Commission
Initial Term of Office: 10 Years
Method of Retention: Reappointed to subsequent term by the
 Judicial

Selection Commission (10 year term)

Intermediate Court of Appeals

Appointive System: Merit Selection through Nominating Commission
Initial Term of Office: 10 Years
Method of Retention: Reappointed to subsequent term by the
 Judicial

Selection Commission (10 year term)

Circuit Court and Family Court

Appointive System: Merit Selection through Nominating Commission
Initial Term of Office: 10 Years
Method of Retention: Reappointed to subsequent term by the
 Judicial

Selection Commission (10 year term)

IDAHO*

Supreme Court

Elective System: Non-Partisan Election
Initial Term of Office: 6 Years
Method of Retention: Re-election for additional 6 year terms

Court of Appeals

Elective System: Non-Partisan Election
Initial Term of Office: 6 Years
Method of Retention: Re-election for additional 6 year terms

District Court

Elective System: Non-Partisan Election
Initial Term of Office: 4 Years
Method of Retention: Re-election for additional 4 year terms

*[Compiler's Note: Idaho uses a judicial nominating commission to fill midterm vacancies on all levels of court.]

ILLINOIS

Supreme Court

Elective System: Partisan Election
Initial Term of Office: 10 Years
Method of Retention: Retention Election (10 year term)

Appellate Court

Elective System: Partisan Election
Initial Term of Office: 10 Years
Method of Retention: Retention Election (10 year term)

Circuit Court

Elective System: Partisan Election
Initial Term of Office: 6 Years
Method of Retention: Retention Election (6 year term)

INDIANA

Supreme Court*Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 2 Years*Method of Retention:* Retention Election (10 year term)**Court of Appeals***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 2 Years*Method of Retention:* Retention Election (10 year term)**Circuit Court (not including Vanderburgh County)***Elective System:* Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**Circuit Court (Vanderburgh County only)***Elective System:* Non-Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**Superior Court (not including Allen, Lake, St. Joseph, or Vanderburgh Counties)***Elective System:* Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**Superior Court (Allen and Vanderburgh Counties only)***Elective System:* Non-Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**Superior Court (Lake* and St. Joseph Counties only)***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 2 Years*Method of Retention:* Retention Election (6 year term)

[Compiler's Note: Three of the judges in Lake County run in partisan elections for 6 year terms then have to be re-elected for additional terms.]

IOWA**Supreme Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 1 Year*Method of Retention:* Retention Election (8 year term)**Court of Appeals***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 1 Year*Method of Retention:* Retention Election (6 year term)**District Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 1 Year*Method of Retention:* Retention Election (6 year term)**KANSAS****Supreme Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 1 Year*Method of Retention:* Retention Election (6 year term)**Court of Appeals***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 1 Year*Method of Retention:* Retention Election (4 year term)**District Court (seventeen districts)***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 1 Year

Method of Retention: Retention Election (4 year term)
District Court (fourteen districts)
Elective System: Partisan Election
Initial Term of Office: 4 Years
Method of Retention: Re-election for additional 4 year terms

KENTUCKY*

Supreme Court

Elective System: Non-Partisan Election
Initial Term of Office: 8 Years
Method of Retention: Re-election for additional 8 year terms

Court of Appeals

Elective System: Non-Partisan Election
Initial Term of Office: 8 Years
Method of Retention: Re-election for additional 8 year terms

Circuit Court

Elective System: Non-Partisan Election
Initial Term of Office: 8 Years
Method of Retention: Re-election for additional 8 year terms

*[Compiler's Note: Kentucky uses a judicial nominating commission to fill midterm vacancies on all levels of court.]

LOUISIANA

Supreme Court

Elective System: Partisan Election*
Initial Term of Office: 10 Years
Method of Retention: Re-election for additional 10 year terms

Court of Appeals

Elective System: Partisan Election*
Initial Term of Office: 10 Years
Method of Retention: Re-election for additional 10 year terms

District Court

Elective System: Partisan Election*
Initial Term of Office: 6 Years
Method of Retention: Re-election for additional 10 year terms

*[Compiler's Note: Louisiana judicial elections are partisan inasmuch as the candidates' party affiliations appear on the ballot. However, two factors lead a somewhat nonpartisan character to these elections: (1) primaries are open to all candidates; and (2) judicial candidates generally do not solicit party support for their campaigns.]

MAINE

Supreme Judicial Court

Appointive System: Governatorial Appointment without Nominating Commission
Initial Term of Office: 7 Year
Method of Retention: Reappointment by governor, subject to legislative confirmation

Superior Court

Appointive System: Governatorial Appointment without Nominating Commission
Initial Term of Office: 7 Years
Method of Retention: Reappointment by governor, subject to legislative confirmation

MARYLAND*

Court of Appeals

Appointive System: Merit Selection through Nominating Commission
Initial Term of Office: **

Method of Retention: Retention Election (10 year term)

Court of Special Appeals

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: **

Method of Retention: Retention Election (10 year term)

Circuit Court

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: **

Method of Retention: Nonpartisan Election (15 year term)***

*[Compiler's Note: Merit Selection established by executive order in Delaware, Maryland, Massachusetts, and New Hampshire. In all other jurisdictions merit selection established by constitutional or statutory provision.]

**[Compiler's Note: Until the first general election following the expiration of one year from the date of the occurrence of the vacancy.]

***[Compiler's Note: May be challenged by other candidates.]

MASSACHUSETTS*

Supreme Judicial Court

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: to age 70

Method of Retention: NA

Appeals Court

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: to age 70

Method of Retention: NA

Trial Court of Massachusetts

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: to age 70

Method of Retention: NA

*[Compiler's Note: Merit Selection established by executive order in Delaware, Maryland, Massachusetts, and New Hampshire. In all other jurisdictions merit selection established by constitutional or statutory provision.]

MICHIGAN

Supreme Court*

Elective System: Partisan Election

Initial Term of Office: 8 Years

Method of Retention: Re-election for additional 8 year terms

Court of Appeals

Elective System: Partisan Election

Initial Term of Office: 6 Years

Method of Retention: Re-election for additional 6 year terms

Circuit Court

Elective System: Partisan Election

Initial Term of Office: 6 Years

Method of Retention: Re-election for additional 6 year terms

*[Compiler's Note: Candidates for the Michigan Supreme Court are nominated at party conventions, but in general elections, party affiliations are not listed on the ballot. Candidates, however, most often run with party endorsements.]

MINNESOTA*

Supreme Court

Elective System: Non-Partisan Election

Initial Term of Office: 6 Years

Method of Retention: Re-election for additional 6 year terms

Court of Appeals

Elective System: Non-Partisan Election

Initial Term of Office: 6 Years

Method of Retention: Re-election for additional 6 year terms

District Court*Elective System:* Non-Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms

*[Compiler's Note: Minnesota uses a judicial nominating commission to fill midterm vacancies only on the District Court.]

MISSISSIPPI**Supreme Court***Elective System:* Non-Partisan Election*Initial Term of Office:* 8 Years*Method of Retention:* Re-election for additional 8 year terms**Court of Appeals***Elective System:* Non-Partisan Election*Initial Term of Office:* 8 Years*Method of Retention:* Re-election for additional 8 year terms**Chancery Court***Elective System:* Non-Partisan Election*Initial Term of Office:* 4 Years*Method of Retention:* Re-election for additional 4 year terms**Circuit Court***Elective System:* Non-Partisan Election*Initial Term of Office:* 4 Years*Method of Retention:* Re-election for additional 4 year terms**MISSOURI****Supreme Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 1 Year*Method of Retention:* Retention Election (12 year term)**Court of Appeals***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 1 Year*Method of Retention:* Retention Election (12 year term)**Circuit Court (excluding Jackson, Clay, Platte, Saint Louis Counties)***Elective System:* Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**Circuit Court (Jackson, Clay, Platte, Saint Louis Counties only)***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 1 Year*Method of Retention:* Retention Election (6 year term)**MONTANA*****Supreme Court***Elective System:* Non-Partisan Election*Initial Term of Office:* 8 Years*Method of Retention:* Re-election; unopposed judges run for retention**District Court***Elective System:* Non-Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election; unopposed judges run for retention

*[Compiler's Note: Montana uses a judicial nominating commission to fill midterm vacancies on all levels of court.]

NEBRASKA**Supreme Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 3 Years*Method of Retention:* Retention Election (6 year term)**Court of Appeals***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 3 Years*Method of Retention:* Retention Election (6 year term)**District Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 3 Years*Method of Retention:* Retention Election (6 year term)**NEVADA*****Supreme Court***Elective System:* Non-Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**District Court***Elective System:* Non-Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms

*[Compiler's Note: Nevada uses a judicial nominating commission to fill midterm vacancies on all levels of court.]

NEW HAMPSHIRE***Supreme Court***Appointive System:* Merit Selection through Nominating Commission***Initial Term of Office:* to age 70*Method of Retention:* NA**Superior Court***Appointive System:* Merit Selection through Nominating Commission***Initial Term of Office:* to age 70*Method of Retention:* NA

[Compiler's Note: Merit Selection established by executive order in Delaware, Maryland, Massachusetts, and New Hampshire. In all other jurisdictions merit selection established by constitutional or statutory provision.]

**[Compiler's Note: The Governor's nomination is subject to the approval of a five-member executive council.]

NEW JERSEY**Supreme Court***Appointive System:* Gubernatorial Appointment without Nominating Commission*Initial Term of Office:* 7 Years*Method of Retention:* Reappointment by governor (to age 70) with advice and consent of the Senate**Appellate Division of Superior Court***Appointive System:* Gubernatorial Appointment without Nominating Commission*Initial Term of Office:* 7 Years*Method of Retention:* Reappointment by governor (to age 70) with advice and consent of the Senate**Superior Court***Appointive System:* Gubernatorial Appointment without Nominating

Commission*Initial Term of Office: 7 Years**Method of Retention: Reappointment by governor (to age 70) with advice and consent of the Senate***NEW MEXICO****Supreme Court***Appointive System: Merit Selection through Nominating Commission**Initial Term of Office: until next general election**Method of Retention: ****Court of Appeals***Appointive System: Merit Selection through Nominating Commission**Initial Term of Office: until next general election**Method of Retention: ****District Court***Appointive System: Merit Selection through Nominating Commission**Initial Term of Office: until next general election**Method of Retention: **

*[Compiler's Note: Partisan election at next general election after appointment for eight-year term for appellate judges, six-year term for district. The winner thereafter runs in a retention election for subsequent terms.]

NEW YORK**Court of Appeals***Appointive System: Merit Selection through Nominating Commission**Initial Term of Office: 14 Years**Method of Retention: ****Appellate Division of the Supreme Court***Appointive System: Merit Selection through Nominating Commission**Initial Term of Office: 5 Years**Method of Retention: Commission reviews and recommends for or against reappointment by governor***Supreme Court***Elective System: Partisan Election**Initial Term of Office: 14 Years**Method of Retention: Re-election for additional 14 year terms***County Court***Elective System: Partisan Election**Initial Term of Office: 10 Years**Method of Retention: Re-election for additional 10 year terms*

*[Compiler's Note: Incumbent reapplies to nominating commission and competes with other applicants for nomination to the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.]

NORTH CAROLINA**Supreme Court***Elective System: Partisan Election**Initial Term of Office: 8 Years**Method of Retention: Re-election for additional 8 year terms***Court of Appeals***Elective System: Partisan Election**Initial Term of Office: 8 Years**Method of Retention: Re-election for additional 8 year terms***Superior Court***Elective System: Non-Partisan Election**Initial Term of Office: 8 Years**Method of Retention: Re-election for additional 8 year terms*

NORTH DAKOTA***Supreme Court***Elective System: Non-Partisan Election**Initial Term of Office: 10 Years**Method of Retention: Re-election for additional 10 year terms***District Court***Elective System: Non-Partisan Election**Initial Term of Office: 6 Years**Method of Retention: Re-election for additional 6 year terms*

*[Compiler's Note: North Dakota uses a judicial nominating commission to fill midterm vacancies on all levels of court.]

OHIO***Supreme Court***Elective System: Partisan Election**Initial Term of Office: 6 Years**Method of Retention: Re-election for additional 6 year terms***Court of Appeals***Elective System: Partisan Election**Initial Term of Office: 6 Years**Method of Retention: Re-election for additional 6 year terms***District Court***Elective System: Partisan Election**Initial Term of Office: 6 Years**Method of Retention: Re-election for additional 6 year terms*

*[Compiler's Note: Ohio primary elections are partisan, but in general elections, party affiliations are not listed on the ballot. Candidates, however, most often run with party endorsements and appear on party slate cards.]

OKLAHOMA**Supreme Court***Appointive System: Merit Selection through Nominating Commission**Initial Term of Office: 1 Year**Method of Retention: Retention Election (6 year term)***Court of Criminal Appeals***Appointive System: Merit Selection through Nominating Commission**Initial Term of Office: 1 Year**Method of Retention: Retention Election (6 year term)***Court of Appeals***Appointive System: Merit Selection through Nominating Commission**Initial Term of Office: 1 Year**Method of Retention: Retention Election (6 year term)***District Court***Elective System: Non-Partisan Election**Initial Term of Office: 4 Years**Method of Retention: Re-election for additional 4 year terms***OREGON****Supreme Court***Elective System: Non-Partisan Election**Initial Term of Office: 6 Years**Method of Retention: Re-election for additional 6 year terms***Court of Appeals***Elective System: Non-Partisan Election**Initial Term of Office: 6 Years**Method of Retention: Re-election for additional 6 year terms***Circuit Court**

*Elective System:**Initial Term of Office: 6 Years**Method of Retention: Re-election for additional 6 year terms***Tax Court***Elective System: Non-Partisan Election**Initial Term of Office: 6 Years**Method of Retention: Re-election for additional 6 year terms***PENNSYLVANIA****Supreme Court***Elective System: Partisan Election**Initial Term of Office: 10 Years**Method of Retention: Retention Election (10 year term)***Superior Court***Elective System: Partisan Election**Initial Term of Office: 10 Years**Method of Retention: Retention Election (10 year term)***Commonwealth Court***Elective System: Partisan Election**Initial Term of Office: 10 Years**Method of Retention: Retention Election (10 year term)***Court of Common Pleas***Elective System: Partisan Election**Initial Term of Office: 10 Years**Method of Retention: Retention Election (10 year term)***RHODE ISLAND****Supreme Court***Appointive System: Merit Selection through Nominating Commission**Initial Term of Office: Life**Method of Retention: NA***Superior Court***Appointive System: Merit Selection through Nominating Commission**Initial Term of Office: Life**Method of Retention: NA***Worker's Compensation Court***Appointive System: Merit Selection through Nominating Commission**Initial Term of Office: Life**Method of Retention: NA***SOUTH CAROLINA*****Supreme Court***Appointive System: Legislative Appointment**Initial Term of Office: 10 Years**Method of Retention: Reappointment by legislature***Court of Appeals***Appointive System: Legislative Appointment**Initial Term of Office: 6 Years**Method of Retention: Reappointment by legislature***Circuit Court***Appointive System: Legislative Appointment**Initial Term of Office: 6 Years**Method of Retention: Reappointment by legislature*

*[Compiler's Note: The Judicial Merit Selection Commission first screens candidates. The commission submits to the General Assembly the names and qualifications of the three candidates it considers best qualified. The General Assembly then must meet in joint session for the election of judges. In order to be elected, a candidate must receive a majority of the vote of the members of the General Assembly voting in joint session.]

SOUTH DAKOTA

Supreme Court*Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 3 Years*Method of Retention:* Retention Election (8 year term)**Circuit Court***Elective System:* Partisan Election*Initial Term of Office:* 8 Years*Method of Retention:* Re-election for additional 8 year terms**TENNESSEE****Supreme Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* until next biennial general election*Method of Retention:* Retention Election (8 year term)**Court of Appeals***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* until next biennial general election*Method of Retention:* Retention Election (8 year term)**Court of Criminal Appeals***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* until next biennial general election*Method of Retention:* Retention Election (8 year term)**Chancery Court***Elective System:* Partisan Election*Initial Term of Office:* 8 Years*Method of Retention:* Re-election for additional 8 year terms**Criminal Court***Elective System:* Partisan Election*Initial Term of Office:* 8 Years*Method of Retention:* Re-election for additional 8 year terms**Circuit Court***Elective System:* Partisan Election*Initial Term of Office:* 8 Years*Method of Retention:* Re-election for additional 8 year terms**TEXAS****Supreme Court***Elective System:* Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**Court of Criminal Appeals***Elective System:* Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**Court of Appeals***Elective System:* Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**District Court***Elective System:* Partisan Election*Initial Term of Office:* 4 Years*Method of Retention:* Re-election for additional 4 year terms**UTAH****Supreme Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* First general election > 3 years after
appointment*Method of Retention:* Retention Election (10 year term)

Court of Appeals*Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* First general election > 3 years after appointment*Method of Retention:* Retention Election (6 year term)**District Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* First general election > 3 years after appointment*Method of Retention:* Retention Election (6 year term)**Juvenile Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* First general election > 3 years after appointment*Method of Retention:* Retention Election (6 year term)**VERMONT****Supreme Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 6 Years*Method of Retention:* Retained by vote of General Assembly (6 year term)**Superior Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 6 Years*Method of Retention:* Retained by vote of General Assembly (6 year term)**District Court***Appointive System:* Merit Selection through Nominating Commission*Initial Term of Office:* 6 Years*Method of Retention:* Retained by vote of General Assembly (6 year term)**VIRGINIA****Supreme Court***Appointive System:* Legislative Appointment without Nominating Commission*Initial Term of Office:* 12 Years*Method of Retention:* Reappointment by legislature**Court of Appeals***Appointive System:* Legislative Appointment without Nominating Commission*Initial Term of Office:* 8 Years*Method of Retention:* Reappointment by legislature**Circuit Court***Appointive System:* Legislative Appointment without Nominating Commission*Initial Term of Office:* 8 Years*Method of Retention:* Reappointment by legislature**WASHINGTON****Supreme Court***Elective System:* Non-Partisan Election*Initial Term of Office:* 6 Years*Method of Retention:* Re-election for additional 6 year terms**Court of Appeals***Elective System:* Non-Partisan Election*Initial Term of Office:* 6 Years

Method of Retention: Re-election for additional 6 year terms

Superior Court

Elective System: Non-Partisan Election

Initial Term of Office: 4 Years

Method of Retention: Re-election for additional 4 year terms

WEST VIRGINIA*

Supreme Court

Elective System: Partisan Election

Initial Term of Office: 12 Years

Method of Retention: Re-election for additional 12 year terms

Circuit Court

Elective System: Partisan Election

Initial Term of Office: 8 Years

Method of Retention: Re-election for additional 8 year terms

*[Compiler's Note: West Virginia uses a judicial nominating commission to fill midterm vacancies only on the Circuit Court.]

WISCONSIN*

Supreme Court

Elective System: Non-Partisan Election

Initial Term of Office: 10 Years

Method of Retention: Re-election for additional 10 year terms

Court of Appeals

Elective System: Non-Partisan Election

Initial Term of Office: 6 Years

Method of Retention: Re-election for additional 6 year terms

Circuit Court

Elective System: Non-Partisan Election

Initial Term of Office: 6 Years

Method of Retention: Re-election for additional 6 year terms

*[Compiler's Note: Wisconsin uses a judicial nominating commission to fill midterm vacancies on all levels of court.]

WYOMING

Supreme Court

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: 1 Year

Method of Retention: Retention Election (8 year term)

District Court

Appointive System: Merit Selection through Nominating Commission

Initial Term of Office: 1 Year

Method of Retention: Retention Election (6 year term)

- **Judicial Selection**
- **AJS Supports Tennessee's Merit Selection Plan**
- **Merit Selection: The Best Way to Choose the Best Judges**
- **Ensuring Judicial Excellence: A Video Program on Merit Selection**
- **Judicial Retention Evaluations Assist Both Voters and Judges**



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

To: Senate Majority Legislators
From: Senator Dave Donley
Date: 04/27/01
Re: Alaska's Judges Terms

My staff has prepared this information in regards to Alaska's judicial officer's terms. It clearly shows that Alaska's judges have longer terms and less public accountability than 47 other states.

Alaska's judicial officers, on average, serve longer terms and have less public accountability than judges in forty-seven other states. The vast majority of the states exercise more public control in two ways; judges are elected by the public and the average terms are shorter than in Alaska. In the seven states with a combination of merit system appointment and elections, the average terms of all levels of judicial officers are less than Alaska. In the five states with a combination of merit system appointment and confirmation by a legislative body, the average terms are longer but this is mitigated by the requirement for legislative confirmation. In the only seven other pure merit system states, judicial terms are shorter on average for appellate and supreme courts. With only two exceptions (Colorado and Utah), Alaska's judicial officers serve longer terms with less public accountability than in any other place in the nation.

Average Terms for Judges Using Various Systems of Selection and Retention

STATE	SUPERIOR	APPELLATE	SUPREME
Alaska	6	8	10

The following terms are for the seven states that, similar to Alaska, use the Merit System solely:

Colorado	6	8	10
Florida	6	6	6
Iowa	6	6	8
Massachusetts	---	---	---
Nebraska	6	6	6
Utah	6	10	10
Wyoming	6	---	8
Average No. of Years	6	7.2	8

Co-Chair: Senate Finance Committee
Vice-Chair: Senate Judiciary Committee

Member: Legislative Budget and Audit Committee • Legislative Council

Average Terms for Judges Using Various Systems of Selection and Retention

There are seven states that use a mixture of systems, including the Merit System and either partisan or nonpartisan elections. Their data is as follows:

STATE	SUPERIOR	APPELLATE	SUPREME
Arizona	4	6	6
Indiana	6	10	10
Kansas	4	4	6
Missouri	6	12	12
New Mexico	6	8	8
Oklahoma	4	6	6
South Dakota	8	---	8
Average No. of Years	5.4	7.7	8

There are five states that use the Merit System, but the Senate confirms appointments. Their data is as follows:

Delaware	12	---	12
Hawaii	---	10	10
Maryland	---	10	10
Vermont	6	---	6
District of Columbia	15	---	15
Average No. of Years	11	10	10.6

The following are the terms for those states that elect their judicial officers either through partisan or nonpartisan ballots:

Alabama	6	8	6
Arkansas	4	8	8
Georgia	4	6	6
Idaho	4	6	8
Illinois	6	10	10
Kentucky	8	8	8
Louisiana	6	10	10
Michigan	6	6	8
Minnesota	6	6	6
Mississippi	4	8	8
Montana	6	---	8
Nevada	6	---	6
North Carolina	8	8	8
North Dakota	6	---	10
Ohio	6	6	6

Page 3

Average Terms for Judges Using Various Systems of Selection and Retention

Oregon	6	6	6
Pennsylvania	10	10	10
Tennessee	8	8	8
Texas	4	6	6
Washington	4	6	6
West Virginia	8	---	12
Wisconsin	6	6	10
Average No. of Years	6	6	8

--- / Court does not exist in jurisdiction or not applicable

The Alaska Judicial Council Opposes SJR 22 and SB 159

The Alaska Judicial Council recommends that the Legislature not adopt SJR22 and SB159 which shorten supreme court retention terms from 10 to 6 years, court of appeals terms from 8 to 4 years, and superior court terms from 6 to 4 years.

Alaska's Constitution strikes the right balance between public accountability and judicial independence. Even a cursory review of the minutes of the Constitutional convention shows that Alaska's Constitutional delegates worked hard to create a judicial merit selection system that delicately balances the public's right to an accountable judiciary with the important goal of an independent judiciary able to protect the Constitutional rights of citizens. The current proposal to change retention terms would upset that balance and damage the integrity of Article IV. Indeed, the drafters of our constitution specifically considered and rejected lowering the retention term for supreme court justices to six years. The American Judicature Society recommends retention terms of at least eight years.

The Judicial Council's thorough evaluation process is more effective in ensuring public accountability than shorter retention terms. Alaska has a system of judicial performance evaluation that is used as a model throughout the United States and in many other countries. The Judicial Council has created a system in which about 10,000 Alaskans in 2000 had an opportunity to critique judicial performance. Citizens commenting included jurors, citizens at public hearings, police, probation officers, social workers, court employees, attorneys and independent court watchers. Their input was summarized and considered by the Judicial Council along with detailed information about appellate affirmances and reversals, peremptory challenges, promptness, conflicts of interest and other aspects of performance. The information was available throughout the state in news articles, on the Internet, in the Alaska Voters' Pamphlet and through other media.

Shorter terms discourage qualified attorneys from applying. Shorter retention terms, with the lesser job security they entail, will discourage highly qualified judicial applicants. This will be especially true for experienced and successful private practitioners. The result of SJR 22 and SB159 may be a lesser qualified judiciary with less experience representing private citizens and businesses.

Increased numbers of judges on the ballot decrease voters' scrutiny of individual judges. At each general election voters are bombarded with information about candidates and ballot propositions leading to what are referred to as "bed-sheet ballots." Voters already have limited time to study information on judges standing for retention. (There were 30 judges on the ballot this past year.) Increasing the numbers of judges on the ballot would only exacerbate that problem.

Shorter retention terms increase costs. An integral part of retention elections is the retention evaluation process. The Judicial Council gathers extensive information on each judge or justice and provides that information to the voters so that they can make informed retention decisions. Increasing the frequency of retention elections would increase the costs of the evaluation or, in the alternative, lead to a less intensive evaluation. Election costs also would increase.

Alaska's current retention terms are in line with retention terms in other merit selection states. Twenty other states have merit selection and retention laws similar to Alaska's Retention terms. In many of those states they are similar to or longer than Alaska's current terms, while only three of those states have terms as short as the six years proposed in SJR 22 for supreme court justices.

Retention terms in Colorado, Indiana, South Carolina and Utah are identical to Alaska's. Five states have longer retention terms longer than Alaska's: California (12 years supreme, 6 years trial court), Hawaii (10 year terms), Maryland (10 years), Massachusetts (to age 70) and Missouri (12 years supreme court, 6 years circuit court).

Retention terms in eight other states are longer than the terms proposed in SJR 22 and SB 159. Florida (6 years supreme, 6 years circuit), Iowa (8 years supreme, 6 years other), Nebraska (6 years), New Mexico (8 years for appellate, 6 years for district), South Dakota (8 years for supreme court), Tennessee (8 years supreme court), Vermont (6 years), Wyoming (8 years for supreme, 6 years for district court).

Only three states have retention terms as short as the terms proposed in SJR 22: Arizona (6 years supreme, 4 years superior), Kansas (6 years supreme court, 4 years district court), Oklahoma (6 years supreme court, 4 years district court).

The Judicial Council already conducts mid-term evaluations of judges. The Council conducts attorney and peace officer surveys every two years of judges who are on the ballot that year, or who will be on the ballot 2 ½ years in the future. The mid-term evaluation gives judges a chance to improve performance and the Council advance notice of any problems.

Voters already have an early opportunity to vote on supreme court justices and superior court judges. Alaska's retention system requires newly appointed superior court judges and justices to first stand for retention after a short, probationary term (three years after appointment). This evaluation period gives judges early feedback on their performance and gives voters an early chance to assess the judges.

Conclusion. Alaska already has a system that emphasizes both judicial accountability and judicial independence. A thorough evaluation gives Alaska voters more information on judicial performance than is available anywhere else in the world and thus Alaska's judges already are more accountable than elsewhere. The judicial independence so prized by our constitutional drafters allows courts to protect the constitutional rights of Alaskans. Shortening retention terms as proposed in SJR 22 and SB 159 will upset this delicate balance. The change is unnecessary, expensive, and would discourage quality judicial applicants. Ultimately, the goal of the Judicial Council is to maximize judicial excellence. This proposal is counterproductive to that goal.

Judicial Terms of Intermediate Appellate Courts

Merit Selection		Appointment		Elective	
Alaska	8	California	12	Alabama	6
Arizona	6	New Jersey	15 ²	Arkansas	8
Colorado	8 ¹	South Carolina	6	Georgia	6
Connecticut	8 ¹	Virginia	8 ¹	Idaho	6
Florida	6			Illinois	10
Hawaii	10 ¹			Kentucky	8
Indiana	10			Louisiana	10
Iowa	6			Michigan	6
Kansas	4			Minnesota	6
Maryland	10			Mississippi	8
Massachusetts (to age 70)	20 ⁴			North Carolina	8
Missouri	12			Ohio	6
Nebraska	6			Oregon	6
New Mexico	8 ³			Pennsylvania	10
New York	5 ⁵			Texas	6
Oklahoma	6			Washington	6
Tennessee	8			Wisconsin	6
Utah	6				
Average	8.2	Average	10.3	Average	7.2

¹ Judges re-nominated or re-appointed rather than up for retention election.

² New Jersey - After initial 7 year term, re-appointed until age 70. Term of appointment until age 70 after 7 year initial term is conservatively averaged as a term of 15 years.

³ First election after appointment is partisan; thereafter retention elections.

⁴ Term of appointment until age 70 is conservatively averaged as a term of 20 years.

⁵ New York - Trial court judges are designated to serve on the intermediate appellate court for a term of 5 years by the governor. But the term for the judge is 14 years as a trial court judge.



ALASKA COURT SYSTEM
State of Alaska Court System
Office of the Administrative Director

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THE ALASKA COURT SYSTEM OPPOSES SB 159

SB 159 would shorten the period between retention elections for judges of the court of appeals. **The proposed shortened retention period would increase costs to the state, lower voters' scrutiny of individual judges, and is not in line with retention terms in other merit selection states.**

The people of Alaska have the opportunity to approve or reject judges at periodic retention elections. Alaska has the nation's most extensive system for seeking public input on retention. The Judicial Council surveys lawyers, law enforcement officers, jurors, court employees and children's caseworkers. It looks at a judge's disciplinary record, disqualifications from assigned cases, appellate record, and the evaluation by the CourtWatch program. The Judicial Council holds public hearings to allow people to testify about their experiences with judges who are standing for retention. Most of this information is made available to the voters. A judge will be voted out of office if enough voters are unhappy with the judge's performance.

The following periods between retention elections for judges of the court of appeals are set forth in AS 15.35.053:

“Each judge of the court of appeals shall be subject to approval or rejection at the first general election held more than three years after the judge’s appointment. If approved, the judge is thereafter subject to approval or rejection in a like manner every eighth year.”

Alaska’s Constitution strikes the right balance between public accountability and judicial independence. Alaska’s Constitutional delegates worked hard to create a judicial merit and selection system that delicately balances the public’s right to an accountable judiciary with the important goal of a strong and independent judiciary. The current proposal to change this retention term would upset that balance and damage the integrity of Article IV.

Although terms for the judges of the court of appeals were not specified in the Alaska Constitution because the court of appeals was created by statute in 1980, the current retention term fits within the constitutional scheme. It is less than the retention term for a supreme court justice (10 years) but more than the term for a superior court judge (6 years).

Shortening this retention term would decrease voters’ scrutiny of individual judges. Shortening this retention term would cause more judges to be on the ballot at each general election. Voters are bombarded with information about candidates and ballot propositions. Voters have limited time to study information on judges standing for retention, and increasing the number of judges on the ballot would only exacerbate that problem.

Shorter retention terms increase costs. The judicial evaluation process is integral to retention elections. The Judicial Council provides voters with important information on

the performance of each judge or justice, so that voters can make informed retention decisions. Increasing the frequency of retention elections would increase the number, and thus the cost, of these evaluations.

Alaska's current retention terms are in line with retention terms in other states. There are currently 39 states that have an intermediate court of appeals. 17 states other than Alaska have merit selection and retention laws for their courts of appeal similar to the laws found here. Of these, nine states have retention terms equal to or longer than Alaska's, and eight have retention terms that are shorter. 21 states have judicial selection and retention by methods other than merit selection, including elections and direct gubernatorial appointment. Of those states, 10 have retention terms equal to or longer than Alaska's, and 11 have retention terms that are shorter. Thus, retention terms in one-half of the other states with courts of appeal are equal to or longer than Alaska's current terms.

Shorter terms will tend to discourage the most highly qualified people from seeking judicial office. Short-term positions are inherently less attractive because of the lack of job security. Highly skilled attorneys with well established practices will be less inclined to leave their private-sector positions knowing that they must stand for retention at four year intervals.

Voters already have an early opportunity to vote on judges of the court of appeals. Alaska's retention system requires newly appointed judges of the court of appeals to first stand for retention after a short, probationary term (three years after appointment). This evaluation period gives judges early feedback on their performance and gives voters an early chance to unseat them if necessary.



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

MEMORANDUM

To: Senator Gene Therriault, Chair
Senate State Affairs Committee

From: Senate Judiciary Committee

Date: March 15, 2002

Re: Senate Bill 159

I request that Senate Bill 159 "An Act relating to retention elections for judges of the court of appeals" be scheduled for a hearing in the State Affairs Committee at your earliest convenience.

SB 159 amends AS 15.35.053 to change to the length of time between retention elections for court of appeals judges from eight years to four years. It is designed to increase the judicial branch's accountability to Alaskans through greater public involvement.

Currently each appeals court judge is subject to approval or rejection every eighth year. SB 159 changes this interval to four years, providing Alaskans more frequent opportunities to assess their performance. It is important that those who serve us in the judicial branch of government be accountable for their job performance.

This is the seventh hearing request that I have submitted. Previous hearing requests were delivered on.

Thank you in advance for your consideration of this request. If you or your staff should have any questions, please contact Senator Donley at x3892 or Kristie Keele of his staff at 269-0234.

Previous Hearing Requests: April 17, 2001
April 26, 2001
April 27, 2001
April 30, 2001
May 1, 2001
May 3, 2001
May 15, 2001

Co-Chair: Senate Finance Committee
Vice-Chair: Senate Judiciary Committee

Member: Legislative Budget and Audit Committee • Legislative Council

Subject: [Fwd: FROM JO]

Date: Fri, 15 Mar 2002 19:56:00 -0900

From: Gene Therriault <Senator_Gene_Therriault@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Joseph Balash <Joseph_Balash@Legis.state.ak.us>

Joe,

Please have legal draft up a CS for Donley's bill in the S/STA committee that would add a retention vote for magistrates.

Gene

Subject: FROM JO

Date: Thu, 14 Feb 2002 11:16:47 -0900

From: "Jo Kuchle" <jkuchle@mosquitonet.com>

Reply-To: <jkuchle@alaskalaw.com>

To: <Senator_Gene_Therriault@legis.state.ak.us>

Dearest Senator Therriault:

As one of your constituents and certainly one of your biggest fans and supporters, I am requesting you look into the following issue. Currently in AK magistrates and court masters (such as probate masters) are appointed by presiding judges. As such, they do not stand for retention elections. While they are subject to evaluation by attorneys through a survey by the judicial council (see the response below), they are never removed by office through the election process. Although it is difficult to remove a judge from office through the election process, at least it is possible. It is not at all possible to remove a sitting magistrate or master. The argument why retention elections are not necessary will be that magistrates and masters serve "under the supervision of a judge who is subject to election" the reality is that most masters and magistrates recommendations are upheld by Superior Court judges. In most instances, Masters and Magistrates ACT as judges and there is little review of their decisions.

I would strongly encourage your office to introduce legislation to subject magistrates and masters to retention election, just as superior and district court judges are subject to retention elections. As you can tell from the response of the executive director of the Judicial Council, only legislation will change the current process.

As a Republican, I would think anything to give the people control over their judiciary, would be something that would be applauded. Please feel free to contact me with questions.

BY THEY WAY, HAPPY Valentine's DAY!

I love you (how many constituents tell you that!? . . . hopefully not many)

Jo

-----Original Message-----

From: Larry Cohn [mailto:LCohn@ajc.state.ak.us]

Sent: Thursday, February 07, 2002 2:06 PM

To: 'jkuchle@alaskalaw.com'

Subject: RE: Retention Survey

The Supreme Court has requested the Judicial Council to evaluate masters and magistrates. We have done so twice and provided the results to the Supreme Court, the presiding judges, and the masters and magistrates themselves. You should have received Judicial Council surveys related to these evaluations. Requiring masters and magistrates to stand for retention would necessitate legislation. Thanks for responding.

Larry Cohn

[Fwd: FROM JO]

Executive Director

Alaska Judicial Council

1029 West Third Avenue, Suite 201

Anchorage, AK 99501

907-279-2526

-----Original Message-----

From: Jo Kuchle [mailto:jkuchle@mosquionet.com]

Sent: Thursday, February 07, 2002 1:55 PM

To: Larry Cohn

Subject: RE: Retention Survey

I think MASTERS and MAGISTRATES should be evaluated. I would propose to the judicial council that they make recommendations to the Supreme Court to require masters and magistrates be subject to retention.

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chairman
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis



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Senate Judiciary Committee

MEMORANDUM

To: Senator Gene Therriault, Chair
Senate State Affairs Committee

From: Senate Judiciary Committee

Date: May 1, 2001

Re: Senate Bill 159

I request that Senate Bill 159 "An Act relating to retention elections for judges of the court of appeals" be scheduled for a hearing in the State Affairs Committee at your earliest convenience.

SB 159 amends AS 15.35.053 to change to the length of time between retention elections for court of appeals judges from eight years to four years. It is designed to increase the judicial branch's accountability to Alaskans through greater public involvement.

Currently each appeals court judge is subject to approval or rejection every eighth year. SB 159 changes this interval to four years, providing Alaskans more frequent opportunities to assess their performance. It is important that those who serve us in the judicial branch of government be accountable for their job performance.

This is the fifth hearing request that I have submitted. Previous hearing requests were delivered on April 17, April 26, April 27 and April 30.

Thank you in advance for your consideration of this request. If you or your staff should have any questions, please contact Senator Donley at x3892 or Jomo Stewart of his staff at x2705.

DD/kk

ALASKA STATE LEGISLATURE



Sen. Robin Taylor, Chairman
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis

State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

MEMORANDUM

To: Senator Gene Therriault, Chair
Senate State Affairs Committee

From: Senate Judiciary Committee

Date: May 3, 2001

Re: Senate Bill 159

I request that Senate Bill 159 "An Act relating to retention elections for judges of the court of appeals" be scheduled for a hearing in the State Affairs Committee at your earliest convenience.

SB 159 amends AS 15.35.053 to change to the length of time between retention elections for court of appeals judges from eight years to four years. It is designed to increase the judicial branch's accountability to Alaskans through greater public involvement.

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This is the sixth hearing request that I have submitted. Previous hearing requests were delivered on April 17, April 26, April 27, April 30, May 1.

Thank you in advance for your consideration of this request. If you or your staff should have any questions, please contact Senator Donley at x3892 or Jomo Stewart of his staff at x2705.

DD/kk

ALASKA STATE LEGISLATURE



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Senate Judiciary Committee

MEMORANDUM

To: Senator Gene Therriault, Chair
Senate State Affairs Committee

From: Senate Judiciary Committee

Date: April 30, 2001

Re: Senate Bill 159

I request that Senate Bill 159 "An Act relating to retention elections for judges of the court of appeals" be scheduled for a hearing in the State Affairs Committee at your earliest convenience.

SB 159 amends AS 15.35.053 to change to the length of time between retention elections for court of appeals judges from eight years to four years. It is designed to increase the judicial branch's accountability to Alaskans through greater public involvement.

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This is the fourth hearing request that I have submitted. Previous hearing requests were delivered on April 17, April 26, and April 27.

Thank you in advance for your consideration of this request. If you or your staff should have any questions, please contact Senator Donley at x3892 or Jomo Stewart of his staff at x2705.

DD/kk

ALASKA STATE LEGISLATURE



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Senate Judiciary Committee

MEMORANDUM

To: Senator Gene Therriault, Chair
Senate State Affairs Committee

From: Senate Judiciary Committee

Date: April 27, 2001

Re: Senate Bill 159

I request that Senate Bill 159 "An Act relating to retention elections for judges of the court of appeals" be scheduled for a hearing in the State Affairs Committee at your earliest convenience.

SB 159 amends AS 15.35.053 to change to the length of time between retention elections for court of appeals judges from eight years to four years. It is designed to increase the judicial branch's accountability to Alaskans through greater public involvement.

Currently each appeals court judge is subject to approval or rejection every eighth year. SB 159 changes this interval to four years, providing Alaskans more frequent opportunities to assess their performance. It is important that those who serve us in the judicial branch of government be accountable for their job performance.

Thank you in advance for your consideration of this request. If you or your staff should have any questions, please contact Senator Donley at x3892 or Jomo Stewart of his staff at x2705.

HR: April 10, 2001
April 26, 2001
April 27, 2001

DD/kk

ALASKA STATE LEGISLATURE



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Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis

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Juneau, AK 99801-1182
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Senate Judiciary Committee

MEMORANDUM

To: Senator Gene Therriault, Chair
Senate State Affairs Committee

From: Senate Judiciary Committee

Date: April 20, 2001

Re: Senate Bill 159

The Senate Judiciary Committee requests that Senate Bill 159 "An Act relating to retention elections for judges of the court of appeals" be scheduled for a hearing in the State Affairs Committee at your earliest convenience.

SB 159 amends AS 15.35 ^53 to change to the length of time between retention elections for court of appeals judges from eight years to four years. It is designed to increase the judicial branch's accountability to Alaskans through greater public involvement.

Currently each appeals court judge is subject to approval or rejection every eighth year. SB 159 changes this interval to four years, providing Alaskans more frequent opportunities to assess their performance. It is important that those who serve us in the judicial branch of government be accountable for their job performance.

Thank you in advance for your consideration of this request. If you or your staff should have any questions, please contact Senator Donley at x3892 or Jomo Stewart of his staff at x2705.

HR: April 10, 2001
April 20, 2001

DD/kk

ALASKA STATE LEGISLATURE



Sen. Robin Taylor, Chairman
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
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Juneau, AK 99801-1182
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Senate Judiciary Committee

MEMORANDUM

To: Senator Gene Therriault, Chair
Senate State Affairs Committee

From: Senate Judiciary Committee

Date: April 26, 2001

Re: Senate Bill 159

The Senate Judiciary Committee requests that Senate Bill 159 "An Act relating to retention elections for judges of the court of appeals" be scheduled for a hearing in the State Affairs Committee at your earliest convenience.

SB 159 amends AS 15.35.053 to change to the length of time between retention elections for court of appeals judges from eight years to four years. It is designed to increase the judicial branch's accountability to Alaskans through greater public involvement.

Currently each appeals court judge is subject to approval or rejection every eighth year. SB 159 changes this interval to four years, providing Alaskans more frequent opportunities to assess their performance. It is important that those who serve us in the judicial branch of government be accountable for their job performance.

Thank you in advance for your consideration of this request. If you or your staff should have any questions, please contact Senator Donley at x3892 or Jomo Stewart of his staff at x2705.

HR: April 10, 2001
April 26, 2001

DD/kk

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chairman
Sen. Dave Donley, Vice-Chair
Sen. John Cowdery
Sen. Gene Therriault
Sen. Johnny Ellis



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Juneau, AK 99801-1182
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Senate Judiciary Committee

MEMORANDUM

To: Senator Gene Therriault, Chair
Senate State Affairs Committee

From: Senate Judiciary Committee

Date: April 10, 2001

Re: Senate Bill 159

GLT

The Senate Judiciary Committee requests that Senate Bill 159 "An Act relating to retention elections for judges of the court of appeals" be scheduled for a hearing in the State Affairs Committee at your earliest convenience.

SB 159 amends AS 15.35.053 to change to the length of time between retention elections for court of appeals judges from eight years to four years. It is designed to increase the judicial branch's accountability to Alaskans through greater public involvement.

Currently each appeals court judge is subject to approval or rejection every eighth year. SB 159 changes this interval to four years, providing Alaskans more frequent opportunities to assess their performance. It is important that those who serve us in the judicial branch of government be accountable for their job performance.

Thank you in advance for your consideration of this request. If you or your staff should have any questions, please contact Senator Donley at x3892 or Jomo Stewart of his staff at x2705.

DD/kk

ALASKA STATE LEGISLATURE



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Senate Judiciary Committee

SPONSOR STATEMENT SENATE BILL 159 (3/30/01)

SB 159 amends AS 15.35.053 to change to the length of time between retention elections for court of appeals judges from eight years to four years. It is designed to increase the judicial branch's accountability to Alaskans through greater public involvement.

Currently each appeals court judge is subject to approval or rejection by the voters at the first general election held more than three years after he or she is appointed. After the initial election, they are up for approval or rejection only every eighth year. SB 159 changes this interval to four years, providing Alaskans more frequent opportunities to assess their performance. It is important that those who serve us in the judicial branch of government be accountable for their job performance.

There are twenty-two states who select their judges by public elections and another ten states where the legislature either chooses or confirms appointees. Accordingly, in the majority of the United States there is much greater public input, than in Alaska, into who becomes a judge. In Alaska, the opportunity for the public's input comes only through the retention election process. Such a low level of accountability is poor public policy, especially when retention elections are eight years apart. By allowing Alaskans to evaluate court of appeals judges every four years, we will ensure increased public accountability and better job performance.

DD/kk

Sec. 15.35.030. Approval or rejection of supreme court justice. Each supreme court justice shall be subject to approval or rejection at the first general election held more than three years after the justice's appointment. If approved, the justice shall thereafter be subject to approval or rejection in a like manner every tenth year. (§ 7.51 ch 83 SLA 1960)

Sec. 15.35.040. Filing declaration by supreme court justice. Each justice seeking retention in office shall file with the director a declaration of candidacy for retention no later than August 1 before the general election at which approval or rejection is requisite. (§ 7.52 ch 83 SLA 1960; am § 148 ch 100 SLA 1980; am § 30 ch 85 SLA 1986)

Sec. 15.35.041. Requirement of filing fee for supreme court candidate. At the time the declaration is filed, each candidate for retention shall pay a filing fee to the director. The filing fee for a candidate for retention on the supreme court is \$100. (§ 23 ch 80 SLA 1963; am § 149 ch 100 SLA 1980)

Sec. 15.35.050. Placing name of supreme court justice on ballot. The director shall place the name of a supreme court justice who has properly filed a declaration of candidacy for retention on the ballot in each judicial district of the state for the general election at which approval is sought. (§ 7.53 ch 83 SLA 1960; am § 2 ch 18 SLA 1969; am § 150 ch 100 SLA 1980; am § 26 ch 67 SLA 1989)

Sec. 15.35.053. Approval or rejection of a judge of the court of appeals. Each judge of the court of appeals shall be subject to approval or rejection at the first general election held more than three years after the judge's appointment. If approved, the judge is thereafter subject to approval or rejection in a like manner every eighth year. (§ 151 ch 100 SLA 1980)

Sec. 15.35.055. Filing declaration by judge of the court of appeals. Each judge of the court of appeals seeking retention in office shall file with the director a declaration of candidacy for retention no later than August 1 before the general election at which approval or rejection is requisite. (§ 151 ch 100 SLA 1980; am § 31 ch 85 SLA 1986)

Sec. 15.35.057. Requirement of filing fee for court of appeals. At the time the declaration is filed, each candidate for retention shall pay a filing fee to the director. The filing fee for a candidate for retention on the court of appeals is \$100. (§ 151 ch 100 SLA 1980)

Sec. 15.35.059. Placing name of judge of the court of appeals on ballot. The director shall place the name of a judge of the court of appeals who has properly filed a declaration of candidacy for retention on the ballot in each judicial district of the state for the general election at which approval is sought. (§ 151 ch 100 SLA 1980; am § 27 ch 67 SLA 1989)

Sec. 15.35.060. Approval or rejection of superior court judge. Each superior court judge shall be subject to approval or rejection at the first general election held more than three years after the judge's appointment. If approved, the judge shall thereafter be subject to approval or rejection in a like manner every sixth year. (§ 7.54 ch 83 SLA 1960)

ALASKA STATE LEGISLATURE



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Senate Judiciary Committee

Memorandum

TO: Senator Gene Therriault
Chair, Senate State Affairs Committee

FROM: Senator Robin L. Taylor *R.L.T.*

DATE: April 2, 2001

RE: Request for Hearing

I respectfully request the State Affairs Committee schedule for hearing SB 159
"Appeals Court Judges Retention".

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chairman
Sen. Dave Donley, Vice-Chair
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Senate Judiciary Committee

SPONSOR STATEMENT SENATE BILL 159 (3/30/01)

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