

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10593 SENATE JUDICIARY

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# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 138  
 (S) Publish Date: 3/13/01

Revision Date/Time (Note if correction): 02/21/2001 12:10p.m. Dept. Affected: DCED  
 Title: Gram-Leach-Bliley Act & Other Insurance BRU: Insurance Operations  
 Component: Insurance Operations  
 Sponsor: Rules Committee  
 Requester: Governor Component Number: 354

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill has no fiscal impact on this component. It is covered by funds currently appropriated to the division in the operating budget.

Prepared by: Robert A. Lohr, Director  
 Division: Insurance  
 Approved by: Commissioner Deborah B. Sedwick  
 Agency: Department of Community & Economic Development

Phone 907-269-7900  
 Date/Time 02/21/2001 12:10p.m.  
 Date 2/21/2001

For distribution information, call the Governor's Legislative Office

Page 1 of 1

TONY KNOWLES  
GOVERNOR

PO Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500  
Fax (907) 465-3532

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 9, 2001

The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear President Halford:

I am transmitting this bill to implement needed financial service reforms in our insurance code in compliance with the federal Gramm-Leach-Bliley Act (GLBA). These changes will assist the State in maintaining its regulatory authority over the business of insurance in Alaska. The GLBA repealed depression-era restrictions on the insurance, banking, and securities industries and, more notably, removed some of the barriers that limited banks from engaging in the business of insurance.

Under the GLBA, specific standards are established with respect to consumer privacy, consumer protection, insurance producer licensing, and insurance sales. It requires states to streamline and coordinate their regulatory systems to make them faster, less burdensome, and more effective. This bill reforms our laws to conform to the GLBA and to continue the process of streamlining and coordinating insurance regulation.

Under the bill, the GLBA reforms would focus on three key areas:

- Establishing reciprocity for licensing nonresident insurance producers;
- Implementing the GLBA consumer privacy standards regarding sharing of personal information with affiliates and nonaffiliates; and
- Implementing GLBA consumer protection measures related to the sale of insurance by financial institutions.

These reforms are based on models adopted by the National Association of Insurance Commissioners (NAIC).

A significant portion of the bill would amend AS 21.27, the licensing chapter of the insurance code, to provide for reciprocity in the licensing of nonresident producers. In this context, reciprocity means that a nonresident producer would receive a license to transact insurance in this state to the same extent that the producer is licensed in the producer's home state, without

The Honorable Rick Halford  
March 9, 2001  
Page 2

having to satisfy any additional requirements. Licensing in this state would be accomplished by submitting an application, providing proof of licensing and good standing from the home state, and paying the license fees. Reciprocity also would allow resident producers to obtain licensing in other states without meeting state-specific requirements. All insurance producers, however, would still be subject to state-specific requirements related to unfair trade practices or consumer protection. The bill requires use of uniform applications in an electronic format to speed up insurance licensing.

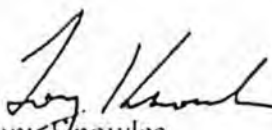
The GLBA requires that at least 29 states adopt either reciprocity or uniformity in insurance producer licensing by November 2002, in order to maintain the authority to license nonresident insurance producers. Otherwise, a national organization authorized under the GLBA would assume that role. Enacting this bill into law in Alaska would achieve reciprocity and thereby help ensure the state retains the authority to license nonresident producers.

Another time-sensitive issue under the GLBA relates to consumer privacy. The federal law sets a minimum privacy standard that states must adopt and enforce by July 1, 2001, or risk losing the authority to enforce state consumer protection standards with respect to financial institution insurance sales. This bill expressly requires those regulated under our insurance statutes to comply with the GLBA privacy standards and authorizes the state director of insurance to adopt corresponding regulations on consumer privacy.

In addition to the GLBA-related reforms, the bill addresses other important issues to facilitate state insurance regulation and to conform to federal law. This includes the ability to obtain national criminal history record checks for persons who want to engage in the business of insurance. It also requires a person with a felony conviction involving dishonesty or breach of trust to obtain the express written consent of the director of insurance before engaging in the business of insurance. Without this consent, federal law prohibits such persons from working in the business of insurance. The amendment under this bill would assist the director of insurance in ensuring that prohibited persons comply with the law.

I urge your prompt and favorable action on this measure.

Sincerely,

  
Tony Knowles  
Governor

# Alaska

## Department of Community and Economic Development

### Division of Insurance

P.O. Box 110805, Juneau, AK 99811-0805  
Telephone: (907) 465-2515 • Fax: (907) 465-3422 • Text Telephone: (907) 465-5437  
Email: Insurance@dced.state.ak.us • Website: www.dced.state.ak.us/insurance/

April 17, 2001

RECEIVED

APR 17 2001

Ans'd.....

The Honorable Robin Taylor  
Chair, Senate Judiciary Committee  
Alaska State Legislature  
State Capitol Room 30  
Juneau, AK 99801-1182

Dear Senator Taylor:

RE: CSSB 138 (L&C) "An Act relating to the business of insurance; amending Rule 402, Alaska Rules of Evidence; and providing for an effective date."

On April 12, 2001, CSSB 138 (L&C) passed the Senate Labor and Commerce. It has been referred to your committee with a zero fiscal note. Under this bill, significant changes would be made to the Alaska Insurance Code, AS 21, to accomplish insurance reforms necessitated by the federal Financial Services Modernization Act, Gramm-Leach-Bliley Act (GLBA) enacted in 1999.

One important goal of this bill is to amend AS 21.27, the licensing chapter of the insurance code, to provide for reciprocity in the licensing of nonresidents and avoid the creation of a national organization authorized under GLBA, who would override state licensing authority. It also addresses time-sensitive issues relating to consumer privacy and financial institution sales of insurance. GLBA establishes minimum privacy standard that a state must adopt. If a state fails to adopt minimum privacy standards consistent with the GLBA standards the state risks losing their authority to enforce state consumer protection standards with respect to financial institution insurance sales.

Under GLBA, specific standards are established for producer licensing, consumer privacy, consumer protections, in bank insurance sales. Enacting this bill will accomplish reforms consistent with GLBA and will continue the process of streamlining and coordinating insurance regulation among states.

In addition to addressing the federal GLBA requirements, the bill also makes changes necessary to conform with federal laws and to strengthen, yet also simplify the regulatory process.

For example, the bill include provisions that:

- enables the division to obtain national criminal history record checks for any person who wants to engage in the business of insurance;

The Honorable Robin Taylor

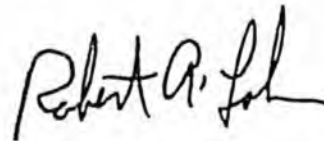
-2-

April 17, 2001

- requires a person with a felony conviction involving dishonesty and breach of trust to obtain the express written consent of the director of insurance before engaging in the business of insurance, as required by and consistent with 18 U.S.C. 1033 and 1034 (Violent Crime Control and Law Enforcement Act of 1994);
- removes the current statutory requirement that an insurance firm with many branch offices license each branch office separately;
- allows multiple insurers within the insurer's holding company system or group to file a single company appointment request;
- gives authority to the director to provide for the electronic submission of information and for electronic confirmation of a requested submission.

I respectfully request you to schedule CSSB 138 (L&C) for hearing in your committee as soon as possible. I would be happy to meet with you to answer any questions you may have on the bill, and to provide any other information you may require. Thank you for considering this request.

Sincerely,



Robert A. Lohr  
Director

RAL/lvs7400.doc

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 138(L&C)

- 1 Page 23, line 11:
- 2 Delete "the director may by regulation require a surplus lines broker to"
- 3 Insert "if required by the director by regulation,"

**SB**

**142**

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 142  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Lease-Purchase Spring Creek BRU: Revenue Operations  
 Component: Treasury  
 Sponsor: Senator Torgerson  
 Requester: Senate Judiciary Committee Component Number: 121

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel (Marketing & Selling Boards)	10.0					
Contractual	8.0	7.0	7.0	7.0	7.0	7.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Debt Service		1,368.8	1,365.7	1,365.4	1,368.3	1,369.0
<b>TOTAL OPERATING</b>	<b>18.0</b>	<b>1,375.8</b>	<b>1,372.7</b>	<b>1,372.4</b>	<b>1,375.3</b>	<b>1,376.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	18.0	1,375.8	1,372.7	1,372.4	1,375.3	1,376.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Project Fund Investment Earnings						
<b>TOTAL</b>	<b>18.0</b>	<b>1,375.8</b>	<b>1,372.7</b>	<b>1,372.4</b>	<b>1,375.3</b>	<b>1,376.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation authorizes a lease-purchase agreement with the City of Seward for the construction of an addition to the Spring Creek Correctional Center. As with earlier financings for the Spring Creek Correctional Center, the State Bond Committee would issue State of Alaska Certificates of Participation in conjunction with the City of Seward to fund the construction.

Assuming an interest cost of 6.05% (approximately 100 basis points above current rates), and a 20-year term, annual debt service would be approximately \$1.38 million beginning in fiscal year 2003, with a total repayment of approximately \$26 million.

Due to the uncertainty in predicting future interest rates, the above-market rate of 6.05% is used for purposes of establishing a maximum payment amount. It is anticipated, however, that the actual payments would be somewhat less than the amounts in this fiscal note. If bonds were issued at today's interest rate, the annual debt service payments would be approximately \$110,000 less per year and total payments would be \$2.2 million less over the 20-year term.

Prepared by: Deven Mitchell Phone 465-3750  
 Division: Treasury Date/Time March 16, 2001, 2 p.m.  
 Approved by: Larry Persily, Deputy Commissioner Date 03/16/2001  
 Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office



# ALASKA STATE LEGISLATURE

## SENATOR JOHN TORGERSON

- ◆ CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
- ◆ CHAIR, SENATE RESOURCES COMMITTEE

Session:

State Capitol, Room 427, Juneau, AK 99801  
Telephone 907/465-2828 Fax 907/465-4779

District:

45457 Kenai Spur Hwy.; Suite 101B, Soldotna, AK 99669  
Telephone 907/260-3042 Fax 907/260-3044

### SB 142 - LEASE-PURCHASE SPRING CREEK CORRECTIONAL Sponsor Statement

This bill authorizes a lease-purchase agreement with the City of Seward for the construction of an addition to the Spring Creek Correctional Center for secure classroom facilities and prisoner housing.

The State of Alaska has certain constitutional and statutory duties to provide educational opportunities to prisoners for eventual reintegration of those prisoners into society. Spring Creek Correctional Center has operated a successful pilot program that is intended to accomplish those duties.

This legislation would provide space for an educational program, a vocational training program, and housing for the inmates in those programs. Additionally, some work will need to be accomplished on the site although the core area of the facility is sufficient to accommodate the proposed expansion.

JT/mj: SB 142 (S-JUD) SS: 3-19-01

REPRES

Anchor Point Bear Creek Clam Gulch Cooper Landing C  
Kusitof Lowell Point Mouse Pass Nauyasuk Nikoluevsk

INSULA

Halibut Cove Homer Hope Kachemak City Kachemak Selo  
SPONSOR STATEMENT Seward Seldovia Soldotna Stariski Sterling Voznesenka



# ALASKA STATE LEGISLATURE

## SENATOR JOHN TORGERSON

- ◆ CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
- ◆ CHAIR, SENATE RESOURCES COMMITTEE

Session:

State Capitol, Room 427, Juneau, AK 99801  
Telephone 907/465-2828 Fax 907/465-4779

District:

45457 Kenai Spur Hwy.; Suite 101B, Soldotna, AK 99669  
Telephone 907/260-3042 Fax 907/260-3044

### SB 142 - LEASE-PURCHASE SPRING CREEK CORRECTIONAL Sectional Analysis

**Section 1.** Purpose and Findings sections, stating

(a) Findings as:

- (1) the state and commissioner of corrections have certain constitutional and statutory duties to prisoners for educational and other opportunities;
- (2) Spring Creek Correctional Center (SCCC) has a pilot program to achieve the goals;
- (3) School age by statute extends until 20 years of age when person has not completed the twelfth grade; and
- (4) More than 400 inmates state wide under 21 years of age that would benefit from educational programs.

(b) Purpose as:

To provide educational opportunities for prisoners, especially prisoners of school age through the pilot program at SCCC.

**Section 2.** Adds new section to uncodified law that:

- (a) Authorizes Department of Administration to enter into a lease-purchase agreement with the City of Seward for the construction of a facility and provide secure classroom facilities and housing for prisoners transferred to SCCC; project approval subject to limitations:

- (1) total constructions and related costs not to exceed \$15 million;
- (2) total lease payments not to exceed \$28,320,000 and annual rental obligation not to exceed \$1,621,200;
- (3) State owns facility at end of lease-purchase agreement;
- (4) Addition design and construction must provide secure classroom facilities and housing, not fewer than 140 beds.

- (b) Subsection (a) provides notice and approval required by AS 36.30.085.

JT/mj: SB 142 (S-JUD) SS: 3/19/01

REPRESENTING THE PEOPLE OF THE STATE OF ALASKA

Anchorage Point Barrow Creek Clam Gulch Cooper Landing C  
Kasilof Lowell Point Moose Pass Nanwalek Nikoluevsk

Sectional Analysis

INSULA

Halibut Cove Homer Hope Kachemak City Kachemak Selo  
Seward Seldovia Soldotna Stariski Sterling Voznesenka

## Project Budgets for Expansion of Spring Creek Correctional Center's Youthful Offender Program

	For Youthful Offenders Unit Capacity of 150
Educational Space	\$6,210,000
Vocational Training Space	\$2,530,000
Housing	\$10,960,000
Site Development & Utilities	\$2,430,000
Totals	\$22,130,000

## EDUCATIONAL SPACE PROGRAM

	For Youthful Offenders Unit Capacity of 150		
	Quantity	Size, Sq.Ft.	Sq.Ft.
Classrooms (linkable in pairs)	5	800	4,000
Library/Study Hall	3	500	1,500
Computer Lab(s)	2	500	1,000
Inmate Toilets	1	225	225
Staff Toilet(s)	2	50	100
Storage	6	150	900
Staff Offices	7	90	630
Staff Workroom	1	150	150
Counseling Room(s)	4	225	900
Culinary Skills Kitchenette	1	275	275
Chapel Space	1	1500	1,500
Sub-Total Net Space Requirement			11,180
Net-to-Gross Factor			1.7
Total			19,006
Estimated Construction Cost/S.F.			230
Project Budget Factor			1.42
Estimated Cost			<b>\$6,210,000</b>

## VOCATIONAL TRAINING SPACE PROGRAM

For Youthful Offenders Unit Capacity of 150			
Size,			
	Quantity	Sq.Ft.	Sq.Ft.
Material Storage/Staging	1	1800	1,800
Sallyports	2	200	400
Workshop(s)	1	4000	4,000
Office(s)	2	90	180
Toilet(s)	1	225	225
Classroom	2	250	500
Sub-Total Net Space Requirement			7,105
Net-to-Gross Factor			1.32
Total			9,379
Estimated Construction Cos/S.F.			190
Project Budget Factor			1.42
Estimated Cost			<b>\$2,530,000</b>

## HOUSING SPACE PROGRAM

	For Youthful Offenders Unit Capacity of 150		
	Quantity	Size, Sq.Ft.	Sq.Ft.
Double-Occupancy "Wet" Cells	64	100	6,400
Single-Occupant "Wet" Max Cells	22	90	1,980
Single-Occupant "Wet" Seg. Cells	10	90	900
Showers	1	400	400
Dayroom(s)	2	2750	5,500
Control Room(s)	1	250	250
Sallyports	1	150	150
Serving Kitchen	1	300	300
Production Kitchen			0
Staff Offices	5	90	450
Staff Toilet(s)	2	50	100
Nurse's Office & Exam Room	1	300	300
Conference Room(s)	1	200	200
Control Room(s)	1	250	250
Mini-Library(s)	2	150	300
Property Storage	150	5	750
General Storage	3	100	300
Sub-Total Net Space Requirement			18,530
Net-to-Gross Factor			1.7
Total			31,501
Estimated Construction Cost/S.F.			245
Project Budget Factor			1.42
Estimated Cost			#####

## Site Development & Utilities

	For Youthful Offenders Unit Capacity of 150
	Allowance
Excavation, Backfill, Grading	250,000
Expand Perimeter Fence Route	350,000
Expand Perimeter Detection Zones	175,000
Expand Patrol Road, Lighting	125,000
Sewage Collection Piping	50,000
Water Distribution Piping	40,000
Electrical Distribution	40,000
Heating Fuel Storage Tankage, Piping	40,000
Industries Product Warehousing	350,000
Expand Parking Lot	90,000
Outdoor Recreation Yard, Covered	200,000
<b>Total</b>	<b>\$1,710,000</b>
<b>Project Budget Factor</b>	<b>1.42</b>
<b>Estimated Cost</b>	<b>\$2,430,000</b>

## SB 142 Offender Data

Sentenced Felons - One Year Or More to Serve				
	25 & Under	24 & Under	23 & Under	22 & Under
AGE	Offenders			
25	30			
24	29	29		
23	30	30	30	
22	17	17	17	17
21	33	33	33	33
20	21	21	21	21
19	12	12	12	12
18	6	6	6	6
17	0	0	0	0
<b>TOTAL</b>	<b>178</b>	<b>148</b>	<b>119</b>	<b>89</b>

Additionally, there are **388 UNSENTENCED** felons in the system age 25 or younger.

**SB**

**145**



ALASKA STATE LEGISLATURE  
Senator Rick Halford  
*President of the Senate*

While in Session:  
State Capitol  
Juneau, AK 99801-1182  
907-465-4958

While in Interim:  
P.O. Box 670190  
Chugiak, AK 99567  
907-694-4958

SPONSOR STATEMENT

CSSB145 ( )

The Village Public Safety Officer (VPSO) program is the first line of law enforcement in many small communities in the unincorporated areas of the state. Designed as a "first responder" law enforcement arm for many villages throughout the state, the VPSO program has established a commendable record of public service previously unavailable to these communities.

Although the VPSO program falls within the Department of Public Safety, the officers are actually employed by the Native nonprofit corporations responsible for the area. VPSO oversight, technical support, training and field support are provided by the Department of Public Safety. The selection of officers in a particular village is jointly approved by the nonprofit corporation and the Alaska State Troopers.

A VPSO learns about law enforcement, first aid, fire fighting and other public safety issues by attending an eight-week VPSO Academy, which includes a two-week fire-fighting course. Continued training is provided depending on the proficiency of the officer and the specific needs of the area.

VPSO officers are unique in that they are selected partly for their familiarity with and background in the geographic area they serve. Special consideration is given to hiring residents with a long history in the community. With specialized training unavailable to most villagers, the VPSO officer provides preliminary services that include law enforcement, EMS, first aid, fire fighting assistance, emergency search and rescue support, initial alcohol and drug abuse support for the community, domestic counseling and, equally important, scheduled and emergency contact with the Troopers.

At one time, there were over 120 VPSO officers in the state. Presently, the program consists of only 85 VPSO officer positions. Despite the successes of this program, it has been plagued with temporary shortages of officers. Investigations have exposed the most obvious reasons for the relatively high turnover rate among VPSO officers. Cited the most frequently were:

1. Inadequate pay
2. Lack of career opportunities
3. Lack of support from law enforcement community
4. Inadequate retirement system
5. Lack of support funds

Senate Bill 145 is designed to resolve some of the above complaints and to elevate the VPSO program to a point where it provides incentive for law enforcement stability within these small communities.

This legislation also creates a Regional Public Safety Officer (RPSO) program within the Department of Public Safety to serve as a link between the VPSO officers and the troopers, to provide a career path for VPSO officers and to provide a local supervisory position for which service as a VPSO officer is an important ingredient in the selection of regional officers. RPSO officers, like VPSO officers, will be allowed and encouraged to remain in the same area and not be required to move around the state like Troopers are required to do. The RPSO differs from the VPSO in that the regional officers will be state employees; they will be part of the Department of Public Safety and will participate in the state's retirement system. They will not be part of the police retirement system until they become certified police officers. Regional officers will have more supervisory and training responsibilities than village officers. Regional officers need not be certified police officers but in-service training opportunities will provide the option for the RPSO to meet required standards and receive certification while occupying the same position.

The fiscal note for SB 145 includes a pilot project for the RPSO system with the initial hiring of four regional officers. Continuation of this program will depend on favorable reports from the Department of Public Safety, the Department of Corrections and the VPSO non-profit employers.

VPSO and RPSO officers will be given some probation and parole supervision authority as directed by the Department of Corrections. This will serve two purposes. Individuals on probation and parole will be allowed to serve within their own community rather than being forced to reside in larger more hostile situations where the individual does not have family support and is more likely to develop recurring problems. This will also serve to provide more responsibilities for the VPSO and RPSO officers concurrent with increased compensation.

This legislation has provided that the VPSO officer may be included in the state retirement system, but not under the police officer retirement system. Some VPSO officers may choose to remain under the existing non-profit corporation retirement system being provided.

It should be emphasized that neither the VPSO nor RPSO program is intended to replace an incorporated community police force. This program specifically targets communities with populations under 1,000 and does not provide the technical sophisticated law enforcement and training provided by many municipal police organizations. The VPSO and RPSO programs are designed to augment and complement other municipal and statewide law enforcement programs.

Brevig Mission V.P.S.O.  
P.O. Box 79  
Brevig Mission, Alaska 99785  
Phone: (907) 642-2264

March 28, 2001

The Honorable Rick Halford  
State Capitol, Room 7  
Juneau, Alaska 99801

Dear Senator Halford:

As a V.P.S.O. and a citizen of rural Alaska I strongly support the efforts to pass Senate Bill 145. As a V.P.S.O. I provide law enforcement, fire suppression, emergency medical services and search and rescue services in my rural community of Brevig Mission. In most situations I'm alone with no back up or help, and most of the situations that I must face are dangerous and potentially life threatening.

We as V.P.S.Os are paid anywhere from 14-38% less than our municipal counterparts employed in like positions. Due to our low wages I'm forced to take an extended leave of absence from the V.P.S.O. program to pursue a higher paying job opportunity, which will begin in the spring and last till late fall, so that I may make ends meet financially.

I'm truly grateful that Senate Bill 145 was introduced and I thank you for this time to express my support. I urge the Alaska Legislature to appropriate additional funds for V.P.S.O. wage increases to be brought to an equitable level so as to improve the provision of rural public safety in the State of Alaska.  
"First Responders, Last Frontier."

Sincerely,

Ronald J. Bloomstrand Jr.  
Village Public Safety Officer



# KAWERAK, INC.



PO. BOX 948 • NOME ALASKA 99762

TELEPHONE: (907) 443-5231 • FAX: (907) 443-3708

- SERVING THE VILLAGES OF:
- UNFVIG MISSION
- COKINICIL
- DIOMEDE
- ELIM
- GAMAFIL
- GOLOVIN
- KING ISLAND
- KUYUK
- MARY'S IGLOO
- NOME
- SAVOONGA
- SHAKTOOLIK
- SIKIMAREF
- SOLOMIN
- STEBBINS
- ST MICHAEL
- PELLER
- UPPAUKIFFT
- WALIS
- WHITE MOUNTAIN

March 28, 2001

The Honorable Rick Hallford  
 The Honorable Dave Donley  
 The Honorable Pete Kelly  
 The Honorable Donny Olson  
 State Capitol  
 Juneau, Alaska 99801

Gentlemen:

On behalf of Kawerak Inc., I am writing to express our support for the passage of Senate Bill 145. Village Public Safety Officers (VPSOs) provide law enforcement, fire suppression, emergency medical services, and search and rescue services in rural and isolated communities throughout Alaska – hence their motto "First Responders Last Frontier." They have very broad responsibilities and they are, in most instances, the lone, trained, unarmed peace officer in their community.

VPSO's are paid anywhere from 14-38% less than their municipal counterparts employed in like positions. Their benefits need to be consistent with other peace officers in Alaska. The VPSO turnover rate is mainly due to low wages and benefits provided in relation to the high responsibility and dangerous nature of their job.

We are grateful that Senate Bill 145 was introduced and we encourage you to actively work for its passage. We urge the Alaska Legislature to appropriate additional funds for VPSO wage increases to be brought to an equitable level so as to improve the provision of rural public safety in the State of Alaska.


Sincerely,

Kawerak Inc.

Loretta Bullard  
 President

cc: Senator Ward, Senator Lincoln, Senator Hoffman, Senator Austerman

IRA Council  
P.O. Box 100  
Shaktoolik, Alaska 99771-0100



Native Village of Shaktoolik

Phone (907) 955-3701

Fax (907) 955-2352

March 28, 2001

The Honorable Donny Olson  
State Capitol, Room 510  
Juneau, Alaska 99801


Dear Senator Olson:

We support the efforts to pass Senate Bill 145. VPSO's provide law enforcement, fire suppression, emergency medical services, and search and rescue services in rural and isolated communities throughout Alaska - hence their motto "First Responder, Last Frontier." They have very broad responsibilities and they are, in most instances the lone, trained, unarmed officer in their community.

VPSO's are paid anywhere from 14-38% less than their municipal counterparts employed in like positions. Their benefits need to be consistent with other peace officers in Alaska PERS. The VPSO turnover rate is mainly due to low wages and benefits provided in relation to the high responsibility and dangerous nature of their job.

We are grateful that Senate Bill 145 was introduced and we thank you for this time to express our support. We urge the Alaska Legislature to appropriate additional funds for VPSO wage increases to be brought to an equitable level so as to improve the provision of rural public safety in the State of Alaska.

Sincerely,

  
Edgar M. Jackson Sr.  
President

cc: Senator Rick Halford  
Senator Dave Donley  
Senator Pete Kelly  
Josie Stiles, Kawerak VPSO Program

*King Island*

PHONE

*Native Community*

March 27, 2001

The Honorable Rick Halford  
State Capital Room 7  
Juneau, AK 99801

Dear Senator Halford:

We support the efforts to pass Senate Bill 145 which was introduced by Senate President Rick Halford. The VPSO's provide law enforcement, fire suppression, emergency medical services and search and rescue services in rural and isolated communities throughout Alaska - thus their motto "First Responders, Last Frontier". They have very broad responsibilities and they are in most instances the lone, trained, unarmed peace officer in their community.

VPSO's are paid anywhere from 14-38% less than their municipal counterparts employed in the same positions. Their benefits should be consistent with other peace officers in Alaska PERS. The VPSO turnover rate is mainly due to low wages and benefits provided in relation to the high responsibility and dangerous nature of their job.

We are pleased that Senate Bill 145 was introduced and we thank you for this time to express our support. We urge the Alaska Legislature to appropriate additional funds for VPSO wage increases to be brought to a fair level so as to improve the provision of rural public safety in the State of Alaska.

Respectfully,

*Carmelita Nattanguk*  
Carmelita Nattanguk  
Chief

City of St. Michael  
Box 70  
St. Michael, Alaska 99659  
Ph.#. (907) 923-3222 Fax #(907) 923-2284

March 30, 2001

The Honorable Donald C. Olson  
Alaska State Senator  
State Capital, Room 510  
Juneau, Alaska 99801

Dear Senator Olson:

First of all I would like to thank Rick Halford who introduced the legislation on Senate Bill 145 and Senate Finance Co-Chair Dave Donley and Pete Kelly. The Village Public Safety Officer Program is the only other service provided to 227 tribes in the great state of Alaska.

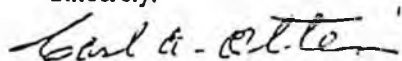
Unlike the other 226 villages St. Michael populace of 412+ people depend on our female VPSO For the demand of vital services such as search and rescue, and supervise people on probation and parole. Our nearest Alaska State Trooper who are located in Nome are 93 airmiles North of St. Michael. Because of the lack of domestic supervision for persons on probation , Recurring incarceration incidents occur for the same people. Making it more expensive and Overbooked jails throughout the state.

The VPSO wages and retirement benefits are long over due. The facilities in the villages are Shacks and the one in St. Michael in squeezed into a small 16'x16' and one tiny cell @ 10'x 6', Built into our small community building which is 23 years old.

We should not take precious time away from VPSO's when they are trying to be eligible for Foodstamps that takes lots of time and effort when they have to get their wages faxed in or other pertinent information for Public Assistance or another part time job.

Thank you for your very important legislation and we give you elected leaders the power of Authority to enhance the Safety, Health and Welfare of our 226 villages who lack the many Resources a number of the metropolitan cities already have in this great big beautiful State of Alaska.

Sincerely:



Carl A. Otten  
The Honorable Mayor  
City of St. Michael

Cc: The Honorable Alaska State Senator Rick Halford  
The Honorable Alaska State Senator Dave Donley  
The Honorable Alaska State Senator Pete Kelly

Co/vw

City of Shaktoolik



P. O. Box 10  
Shaktoolik, Alaska 99771

March 28, 2001

The Honorable Rick Halford  
State Capital, Room 7  
Juneau, Alaska 99801

Dear Senator Halford

We are in support of passing Senate Bill 145. The VPSO's provide law enforcement, fire, suppression, emergency medical services, and search and rescue services in rural and isolated communities throughout Alaska. They have very broad responsibilities and they are, in most instances the lone, trained, unarmed peace officer in their communities.

VPSO's are paid anywhere from 14 to 38% less than their municipal counterparts employed in similar positions. The VPSO's benefits need to be consistent with other peace officers in Alaska PERS. The VPSO turnover rate is mainly due to low wages and benefits provided in relation to the high responsibility and dangerous nature of their position.

We are grateful that Senate Bill 145 was introduced in which we are in support of. We would like to thank you for your time in supporting our VPSO Program throughout Alaska. We would like to urge the Alaska Legislature to appropriate funding for VPSO wage increase so that it can be brought to an equitable level. Thank You for supporting Senate Bill 145.

Sincerely

A handwritten signature in dark ink, appearing to read "Edgar M. Jackson Sr.", is written over the typed name below.

Edgar M. Jackson Sr.-City of Shaktoolik  
Mayor

Shishmaref Kawerak, Inc  
P.O. Box 154  
Shishmaref, Alaska 99772

.....  
**Kawerak, Inc.**

April 2, 2001

The Honorable Rick Halford  
State Capitol, Room 7  
Juneau, Alaska 99801

Dear Senator Halford:

I support the efforts to pass Senate Bill 145.

VPSO's put their lives on the line in a job that is both dangerous and demanding in order to serve their communities.

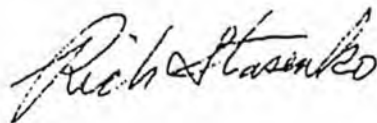
They provide law enforcement, fire suppression, emergency medical services, and search and rescue services in rural and isolated communities throughout Alaska - hence their motto "First Responders, Last Frontier." They have very broad responsibilities and they are, in most instances, the lone, trained, unarmed peace officer in their community.

Yet, VPSO's are underpaid. Their pay is 14-38% less than their municipal counterparts employed in like positions. Their benefits needs to be consistent with other peace officers in Alaska PERS.

Low wages and fewer benefits promote a high turnover rate for VPSO's. This fact puts people in Rural Communities at risk. It is critical to the safety and health of the citizens Rural Alaska to pass Senate Bill 145.

I am grateful for the introduction of Senate Bill 145. The Alaska Legislature needs to support Senate Bill 145 with appropriate funds.

Sincerely,



Rich Stasenko  
Regional EET Specialist

CITY OF GAMBELL

March 29, 2001

TO: Honorable Rick Halford  
State Capitol, RM# 7  
Juneau, AK 99801

FROM: City of Gambell  
P.O. Box 189  
Gambell, AK 99742

Dear Senator Halford,

The City of Gambell supports the passage of Senate Bill 145. VPSO's are our #1 Rural Law Enforcement Officers, in which they provide law enforcement, search & rescue, EMT, and fire support in our communities.

VPSO's are paid less than other municipal counterparts which are employed in the same field, law enforcement. Their benefits should also be the same as other peace officers in Alaska, which are under the PERS. VPSO's turnover rate is high due to low wages, their employed in a highly dangerous job, where they are unarmed.

We are thankful that Senate Bill 145 was introduced. We urge the Alaska Legislature to pass the Senate Bill, this Bill could greatly improve Public Safety in Rural Alaska, with the increase of wages & benefits for the VPSO's.

Wilbur Booslu  
Mayor  
City of Gambell

Preston Apangalook  
City Administrator  
for Wilbur Booslu  
*[Signature]*

March 28, 2001

The Honorable Rick Halford  
State Capital, Room 7  
Juneau, Alaska 99801

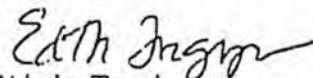
Dear Senator Halford:

I am writing this as an individual, strongly supporting Senate Bill 145. I have known this issue to be the most important and yet never get any support whatsoever since time immemorial. It is long overdue, and I am glad to see it is finally getting attention and support the program needs.

To give you my experience, I am from Gambell, now living in Nome. Gambell always had and will always have law enforcement problems. Even with the funding from the Federal COPS and UHP, where we created Peace Officer positions with much higher hourly wages, we still see high turn over, due to lack of training, benefits and support from the community. I believe we will have interest from the community members and non-residents alike if this important Bill passes. We have experienced and seen much heartache, as Gambell is notoriously known for crimes that you do not see in many small communities, which I'm sure the State is aware of.

Again, I am in full support of this important Bill and I hope it will get full support from legislation! Thank-you.

Sincerely,

  
Edythe Tungiyah

Dedicated Voter from Nome Area

VILLAGE PUBLIC SAFETY OFFICE  
OF  
NELSON LAGOON, ALASKA

RECEIVED  
MAR 27 2001

Ans'd.....

FACSIMILE TRANSMITTAL SHEET

TO:	Senator Robin Taylor	FROM:	VPSO Layton E. Lockett
COMPANY:	Alaska State Legislature	DATE:	03/22/01
FAX NUMBER:		TOTAL NO. OF PAGES INCLUDING COVER:	1
PHONE NUMBER:		FAX NUMBER:	(907) 989-2281
RE:	Senate Bill 145	PHONE NUMBER:	(907) 989-2232

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

NOTES/COMMENTS:

As chairman of the Judiciary Committee I would appreciate your support on Bill 145 .

Thank You Layton Lockett-- Vpso Nelson Lagoon , AK.

Box 6  
Nelson Lagoon AK  
99571

RECEIVED

APR 19 2001

Ans'd.....



VILLAGE PUBLIC SAFETY OFFICER

SAXMAN ALASKA

RT. 2 BOX 21

907-225-5852

FAX:907- 225-6728

*ALASKA'S "REAL" FIRST RESPONDERS*

*POLICE FIRE SAR EMS*

*VPSO CPL. E. DUNAWAY*

Thursday, April 05, 2001

The Honorable Senator Robin L. Taylor  
State Capital  
Juneau, Alaska 99801-1182

Dear Mr. Taylor:

We are asking for your support for Senate Bill # 145, for the expansion of the Village Public Safety Program.

The VPSO's are under paid, many are on public assistances; this does not attract and keep qualified VPSO applicants. I feel this Senate Bill # 145 will help prevent the loss of experienced VPSO's. With the passing of Senate Bill # 145 this expansion of the VPSO program will attract and keep trained officers.

The Village Public Safety Officers have been providing quality public safety services to rural Alaska since 1979.

Sincerely;

Edna Dunaway

# NELSON LAGOON VILLAGE COUNCIL

TRADITIONAL COUNCIL  
NELSON LAGOON VIA COLD BAY, ALASKA 99571  
(907) 989-2204/2205

RECEIVED

APR 10 2001

Ans'd.....

April 5, 2001

Senator Robin Taylor  
Chairman Judiciary Committee  
Alaska State Legislature  
State Capital (MS 3100)  
Juneau, Alaska 99801-1182

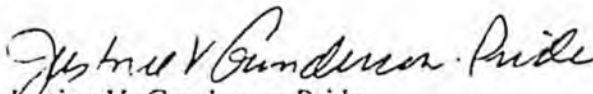
Dear Senator Taylor:

I am writing in support of Bill 145, which would give rural public safety officers the authority to probation and parole supervision to persons under supervision by communicating with and monitoring the activation and progress of those persons at the direction of probation and parole officers. The commission of public safety shall coordinate with commissioner of corrections when providing grants under this section, and the commissioner shall jointly execute an agreement with the nonprofit regional corporation.

By passing House Bill 145, this would enable village safety officers to have local authority to monitor parolees or people on probation. As an example, during the summer months, we experience an influx of fisher persons in Nelson Lagoon, this legislation would help our village safety officer with probation violators.

I urge you vote for this bill. I appreciate your time in reviewing this letter.

Sincerely,

  
Justine V. Gundersen-Pride  
Tribal Administrator

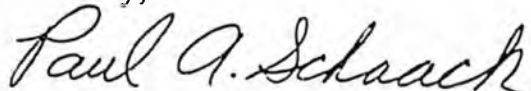
April 4, 2001

RECEIVED  
APR 19 2001  
Ans'd.....

To Whom It May Concern,

I am writing in support of SB 145. I feel this bill is a safety measure that all villages around the State can relate to. The village public safety officer here in Nelson Lagoon is a vital link to our community. All officers enrolled in the program should have the power to monitor paroles more closely by knowing the activities and progress of these persons. I support this bill in its entirety.

Sincerely,



Paul A. Schaack, resident  
P.O. Box 30  
Nelson Lagoon, Alaska  
99571  
(907)989-2238

From  
Jenny Johnson  
General Delivery  
Nelson Lagoon, AK  
99571

RECEIVED  
APR 19 2001  
Ans'd.....

To CARL MOSES:

I support Bill 145 & THINK we need this  
bill to go THRU, Please Help us.

THANK YOU

Jenny Johnson

VILLAGE PUBLIC SAFETY OFFICE  
OF  
NELSON LAGOON, ALASKA

RECEIVED  
APR 19 2001

Ans'd .....

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Senator Robin Taylor	Tribal Chief -- Harold Johnson Sr.
Alaska State Legislature	DATE:
	4/3/01
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
	1
PHONE NUMBER:	FAX NUMBER:
	(907) 989-2209
RE:	PHONE NUMBER
Senate 145	(907) 989-2299

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

NOTES/COMMENTS:

I support bill 145 I would appreciate your help on this bill .

Thank You -- Harold Johnson Sr.



VILLAGE PUBLIC SAFETY OFFICE  
OF  
NELSON LAGOON, ALASKA

RECEIVED  
APR 19 2001  
Ans'd.....

FACSIMILE TRANSMITTAL SHEET

TO: Senator Robin Taylor	FROM: Senta J Lockett.
Alaska State Legislature	DATE: 4/3/01
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: 1
PHONE NUMBER:	FAX NUMBER: (907) 989-2281
RE: Senate 145	PHONE NUMBER (907) 989-2232

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

NOTES/COMMENTS:

I support bill 145 I would appreciate your help on this bill .

Thank You -- Senta J Lockett



P. O. BOX 06 - NLG  
NELSON LAGOON, ALASKA 99571

Letters of Support

**SB**

**159**

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSSB 159(STA)  
 (S) Publish Date: 4/9/02

Revision Date/Time (Note if correction) 4/5/02 11:19AM Dept. Affected: Alaska Judicial Council  
 Title Appeals Court Judges Retention BRU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor Senate Judiciary  
 Requester Senate State Affairs Component No. 771

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	0.0	2.3	2.3	1.2	1.2	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>2.3</b>	<b>2.3</b>	<b>1.2</b>	<b>1.2</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	2.3	2.3	1.2	1.2	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>2.3</b>	<b>2.3</b>	<b>1.2</b>	<b>1.2</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

The Judicial Council is required to evaluate the performance of judges and must make performance information and recommendations available to the public. The Council conducts evaluations of judges in their retention election year. As part of its responsibility to encourage a high level of judicial performance, the Council also conducts interim evaluations of judges two years prior to their retention year. 2002 is a retention election year. The Council will evaluate the performance of 34 judges in 2002, including 17 judges standing for retention and 17 judges who will stand for retention in 2004. The cost of these evaluations is 77.8. The cost of an evaluation per judge, using 2002 figures, is 2.3. This cost is incurred in approximately equal amounts in the fiscal year of the retention election and the fiscal year that precedes the retention election.

CSSB 159(STA) reduces the retention term for judges of the Court of Appeals from 8 to 6 years. There are 3 judges on that court. Judge Mannheim stands for retention in 2002. Under current law and assuming he is retained, Judge Mannheim would not stand for retention again until 2010. CSSB 159(STA) would require Judge Mannheim to stand for retention in 2008. The Council would conduct an extra interim evaluation of Judge Mannheim in 2006.

Judges Coats and Stewart were retained in 2000. Under current law, they would stand for retention in 2008. CSSB 159(STA) would require these judges to stand for retention in 2006. The Council would conduct extra interim evaluations of these judges in 2004.

Prepared by: Larry Cohn, Executive Director  
 Division: Alaska Judicial Council  
 Approved by: \_\_\_\_\_  
 Agency: \_\_\_\_\_

Phone 279-2526 Ext. 1  
 Date/Time 4/9/02 2:06 PM  
 Date 4/9/02



# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

## SPONSOR STATEMENT COMMITTEE SUBSTITUTE FOR SENATE BILL 159 (STA) (4/14/02)

CSSB 159 (STA) amends AS 15.35.053 to change to the length of time between retention elections for court of appeals judges from eight years to six 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 six 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 that 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 six years, we will ensure increased public accountability and better job performance.

DD/kk

Co-Chair: Senate Finance Committee

Vice-Chair: Senate Judiciary Committee

Member: Legislative Budget and Audit Committee • Legislative Council

---

January-May: STATE CAPITOL • JUNEAU, AK • 99801 • (907) 465-3892 • FAX: (907) 465-6595  
June-December: 716 West Fourth Avenue • Suite 400 • ANCHORAGE, AK • 99501 • (907) 269-0234 • FAX: (907) 269-0238  
Email: Senator\_Dave\_Donley@legis.state.ak.us

[www.akrepublicans.org/Donley.htm](http://www.akrepublicans.org/Donley.htm) • [www.legis.state.ak.us/senate/donley/htm](http://www.legis.state.ak.us/senate/donley/htm)



# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

## SPONSOR STATEMENT COMMITTEE SUBSTITUTE FOR SENATE BILL 159 (STA) (4/14/02)

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DD/kk

Co-Chair: Senate Finance Committee

Vice-Chair: Senate Judiciary Committee

Member: Legislative Budget and Audit Committee • Legislative Council



# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

## SPONSOR STATEMENT

SENATE BILL 159

(3/3/02)

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

Co-Chair: Senate Finance Committee

Vice-Chair: Senate Judiciary Committee

Member: Legislative Budget and Audit Committee • Legislative Council

---

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June-December: 716 West Fourth Avenue • JUNEAU, AK • 99801 • (907) 269-0234 • FAX: (907) 269-0238  
Email: [dd@ak.us](mailto:dd@ak.us)  
[www.akrepublicans.org](http://www.akrepublicans.org) [ak.us/senate/donley.htm](http://ak.us/senate/donley.htm)

**Sponsor Statement**



# 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

Co-Chair: Senate Finance Committee

Vice-Chair: Senate Judiciary Committee

Member: Legislative Budget and Audit Committee • Legislative Council

January-May: STATE CAPITOL • JUNEAU, AK • 99801 • (907) 465-3892 • FAX: (907) 465-6595  
June-December: 716 West Fourth Avenue • Suite 400 • ANCHORAGE, AK • 99501 • (907) 269-0234 • FAX: (907) 269-0238

Email: [donley@aklegis.gov](mailto:donley@aklegis.gov)  
[www.akrepublicans.org](http://www.akrepublicans.org)

INFORMATION  
STATEMENT

ak.us  
[us/senate/donley/htm](http://us/senate/donley/htm)

## 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

**SB**

**161**

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

BILL NO. SB161

Revision Date/Time (Note if correction) _____	Dept. Affected _____
Title <u>No Pay for Judges Until Decision</u>	BRU <u>Alaska Court System</u>
Sponsor <u>Senate Judiciary</u>	Component <u>Trial Courts</u>
Requester <u>Senate Judiciary</u>	Component No. <u>768</u>

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	2,622.2	2,622.2	2,622.2	2,622.2	2,622.2	2,622.2
Travel	29.5	19.5	19.5	19.5	19.5	19.5
Contractual	13.3	13.3	13.3	13.3	13.3	13.3
Supplies	18.5	18.5	18.5	18.5	18.5	18.5
Equipment	149.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>2,833.0</b>	<b>2,673.5</b>	<b>2,673.5</b>	<b>2,673.5</b>	<b>2,673.5</b>	<b>2,673.5</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2,833.0	2,673.5	2,673.5	2,673.5	2,673.5	2,673.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>2,833.0</b>	<b>2,673.5</b>	<b>2,673.5</b>	<b>2,673.5</b>	<b>2,673.5</b>	<b>2,673.5</b>

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time	37	37	37	37	37	37
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Attached Analysis

Prepared by <u>C S Christensen III, Deputy Administrative Director</u>	Phone <u>463-4736</u>
Division <u>Alaska Court System</u>	Date/Time _____
Approved by <u>Stephanie J. Cole, Administrative Director</u>	Date <u>4/4/01</u>
Agency <u>Alaska Court System</u>	

For distribution information, call the Governor's Legislative Office

**ALASKA COURT SYSTEM**  
**FISCAL ANALYSIS**  
**SENATE BILL 161**

Existing law provides that no judicial officer may receive a salary warrant until he or she has filed an affidavit that no matter referred to the judicial officer for opinion or decision has been uncompleted or undecided for a period of more than six months. See AS 22.05.140(b) (supreme court justices); AS 22.07.090(b) (judges of the court of appeals); AS 22.10.190(b) (superior court judges); and AS 22.15.220(c) (district judges and magistrates). The earliest of these laws were enacted in 1959; since that time, every judicial officer has filed a salary affidavit every two weeks, or the officer has not received a paycheck.

SB 161 amends the existing statutes, requiring judicial officers to aver that no matter referred for opinion or decision has been uncompleted or undecided for more than four months. Additionally, members of the supreme court and the court of appeals must aver that no matter referred to the full court has been uncompleted or undecided for more than eight months.

It is the view of the Administrative Office of the Court that the existing laws are unconstitutional, and that judicial officers comply with those laws as a matter of comity. Similar statutes have been struck down in the three states in which they have been challenged (Nevada, Montana, and Wisconsin), for reasons which are directly applicable under the Alaska Constitution.

First, Art. IV, §13 of the Alaska Constitution provides that the salary of a justice or judge "shall not be diminished" while in office. Withholding a judge's paycheck for weeks or months acts to diminish the salary.

Second, Art. IV, §1 and §15 of the Alaska Constitution provide that the authority to administer the judiciary resides with the supreme court, not with the legislature. Time limits within which judicial officers are to decide cases relate to the efficient and effective functioning of the court system. They apply directly to the work of every judge, every day, in every case. Such management is a matter of administration within the exclusive authority of the supreme court.

Two additional problems posed by SB 161 have not been addressed in the decisions of other states. The first is the requirement that all members of an appellate court lose their paychecks, if one member's actions delay the release of a decision beyond eight months. This raises issues of fundamental fairness. The second is the application of the new time limits to judicial officers currently serving on the bench. We believe that this violates those provisions of the state and federal constitutions that prohibit the impairment of contracts, by purportedly changing the state's financial commitment to sitting judicial officers.

While the administrative office believes that SB 161 makes unconstitutional amendments to unconstitutional laws, we are providing this fiscal note in conformance with AS 24.08.035. It reflects those items that would be necessary for the courts to comply with the timelines in SB 161

As noted above, the six-month rule has been in effect since the time of statehood. For over forty years, the court system has been funded by the legislature at a level which

**ALASKA COURT SYSTEM**  
**FISCAL ANALYSIS**  
**SENATE BILL 161**

would allow trial judges to decide matters referred for decision within six months of receipt. It has also been funded to allow the appellate judge who has been assigned the task of authoring a decision (not the entire court) to do so within six months. In FY 2000, there were 153,495 cases filed in the trial courts, 329 appeals filed in the court of appeals, and 529 appeals filed in the supreme court. During FY 2000, there were 25 instances in which a justice, judge, or magistrate could not execute a salary affidavit and had a paycheck withheld.

SB 161 substantially reduces the amount of time which trial judges have to issue decisions. It reduces the amount of time that appellate judges and justices have to issue decisions even more dramatically. Swifter justice is an important societal goal. However, because the court system has historically been allocated resources sufficient only to comply with current law, it would require significant additional resources to comply with the changes proposed by SB 161.

Supreme Court

Unlike most state supreme courts, the Alaska Supreme Court is not a cert court for purposes of its civil caseload. This means that it does not have the discretion to reject a case; it must hear and decide every civil case that is appealed to it, regardless of the significance of the issues involved or the merit of the appeal. A cert court is able to control its caseload, and is therefore able to dispose of cases more quickly.

For example, the U.S. Supreme Court has nine justices to share the workload. As a cert court, it chose to hear 86 cases during its FY 2000 term. It believed that this was the number of cases it could reasonably dispose of in one year.

The three states closest to Alaska also have cert courts. In 1999, the California Supreme Court had seven justices to divide the workload, and it issued opinions in 88 cases (13 per justice). The Oregon Supreme Court also had seven justices, and it issued opinions in 98 cases (14 per justice). The Washington Supreme Court had nine justices, and it issued opinions in 148 cases (16 per justice).

In contrast, the Alaska Supreme Court has only five justices to share the workload. However, it issued written opinions in 153 cases in FY 2000 (31 per justice). This is a substantially greater output than the other courts cited.

Given its inability under current law to control its workload, the supreme court was able to issue decisions within the eight-month period specified in SB 161 approximately 64% of the time. It would not be able to comply with SB 161 unless an intermediate court of civil appeals was created, and the supreme court became a cert court. This fiscal note provides the costs for establishing a new court of appeals, using the existing court of criminal appeals as a model. An intermediate court of appeals can only be created by legislative action.

ALASKA COURT SYSTEM  
FISCAL ANALYSIS  
SENATE BILL 161

Court of Appeals

The court of appeals has three members to share the workload. It is currently issuing decisions within the eight-month period specified in SB 161 approximately 71% of the time. While it is possible that the court of appeals could not meet the eight-month deadline without expanding its size to five judges, this fiscal note assumes that it would be able to do so if its support staff was increased by two attorneys.

Trial Courts

Caseloads vary dramatically throughout the trial courts, both in complexity and volume. This fiscal note assumes that the trial courts would be able to meet the four-month deadline if the following resources were added:

Certain superior court judges do not currently have a full-time law clerk to assist with case management. This note reflects costs to provide a law clerk to those judges (Barrow, Kotzebue, and Dillingham).

Certain superior court locations have extremely heavy caseloads per judge or exceptionally high trial rates. This note reflects costs to provide one additional superior court judge and support staff at those locations (Anchorage, Fairbanks, Palmer, and Bethel). Superior court positions can only be created by legislative action.

Alaska Court System  
 SB161 Supporting Documentation for FY02 Costs  
 4/4/01

Description	Increased Staffing Criminal Appellate Court	Civil Appellate Court	Superior Court Changes
Appellate Court Judge (83A)		141,205	
Appellate Court Judge (83A)		141,205	
Appellate Court Judge (83A)		141,205	
Appellate Courts Staff Attorney (20A)	67,282	67,282	
Appellate Courts Staff Attorney (20A)	67,282	67,282	
Appellate Courts Staff Attorney (20A)		67,282	
Appellate Courts Staff Attorney (20A)		67,282	
Law Clerk II (14D)		51,123	
Law Clerk II (14D)		51,123	
Law Clerk II (14D)		51,123	
Law Clerk II (14D)		51,123	
Law Clerk II (14D)		51,123	
Law Clerk II (14D)		51,123	
Law Clerk Travel & Relocation @\$1500/Clerk		9,000	
Executive Secretary (13A)		44,281	
Executive Secretary (13A)		44,281	
Executive Secretary (13A)		44,281	
Secretary II (12A)		41,997	
Superior Court Judge - Anchorage (82A)			138,467
Law Clerk - Anchorage (13D)			48,130
Secretary - Anchorage (12A)			41,997
Court Clerk - Anchorage (12A)			41,997
Law Clerk Travel & Relocation @\$1500/Clerk			1,500
Superior Court Judge - Fairbanks (82A)			139,907
Law Clerk - Fairbanks (13D)			54,422
Secretary - Fairbanks (12A)			49,577
Court Clerk - Fairbanks (12A)			49,577
Law Clerk Travel & Relocation @\$1500/Clerk			1,500
Superior Court Judge - Palmer (82A)			138,467
Law Clerk - Palmer (13D)			49,577
Secretary - Palmer (12A)			43,081
Court Clerk - Palmer (12A)			43,081
Law Clerk Travel & Relocation @\$1500/Clerk			1,500

Alaska Court System  
 SB161 Supporting Documentation for FY02 Costs  
 4/4/01

Description	Increased Staffing C.iminal Appellate Court	Civil Appellate Court	Superior Court Changes
Superior Court Judge - Bethel (82A)			145,652
Law Clerk - Bethel (13D)			61,553
Secretary - Bethel (12A)			52,671
Court Clerk - Bethel (12A)			52,671
Superior Court Judge Relocation			10,000
Law Clerk Travel & Relocation @\$1500/Clerk			1,500
Law Clerk - Dillingham (13D)			59,658
Law Clerk - Kotzebue (13D)			63,419
Law Clerk - Barrow (6 Months @13D in Barrow)			39,354
Law Clerk Travel & Relocation @\$1500/Clerk			4,500
Office Furniture, Supplies, Wan Connection			
Office Supplies @\$500/position	1,000	8,500	9,000
WAN Connectivity @\$360/position	720	6,120	6,480
Computers & Printers @\$2500/position	5,000	42,500	45,000
Desks & Chairs@\$1500/position	3,000	25,500	28,500
Totals	144,284	1,265,941	1,422,738

<b>GRAND TOTAL ALL EXPENSES</b>	<b>2,832,963</b>
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**FY02 Expense Categories**

Personal Services	2,622,143
Contractual	13,320
Travel	29,500
Supplies	18,500
Equipment	149,500
	<u>2,832,963</u>

# ALASKA STATE LEGISLATURE

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



State Capitol  
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## Senate Judiciary Committee

### SPONSOR STATEMENT SENATE BILL 161 (3/29/01)

**“An Act relating to the withholding of salary of justices, judges, and magistrates; relating to requiring prompt decisions by justices, judges, and magistrates; and relating to judicial retention elections for judicial officers.”**

SB 161 amends AS 22.05.140(b), AS 22.07.090(b), AS 22.10.190(b) and AS 22.15.220(c) to require judges to make decisions within four months instead of six months. It also requires appellate courts to make decisions within eight months. Additionally, it requires information to be published in the state voter's guide regarding the failure of any judge or justice to meet these time requirements.

Currently under AS 22.05.140(b), AS 22.07.090(b), AS 22.10.190(b) and AS 22.15.220(c), judicial officers are required to file an affidavit that no case or matter has been uncompleted or undecided for a period of more than six months in order to receive their salary. SB 161 would require cases to be completed within four months for justices and judges to receive their salary. At the appellate court level the time frame would be extended an additional four months for final decisions by the entire Court of Appeals or Supreme Court. The election pamphlet would be required to explain the procedure and indicate any judicial officer not issued one or more salary warrants.

The withholding of salary warrants is designed to ensure that justices and judges produce their decisions in a timely manner. Other states have similar laws. Unfortunately, there are Alaska Supreme Court cases that have been pending for over two years. The parties in these cases have completed their oral arguments and/or filing of the documents required and are simply waiting for the Supreme Court justice to make their decision. Justice delayed is truly justice denied.

This information is critical when voters are making decisions regarding the retention of judges. The public should be made aware of those justices and judges who are consistently late in making their decisions.

Dd/kk

Supreme Court of Montana.

Alfred B. COATE, Plaintiff and Respondent,  
v.  
E. V. "Sonny" OMHOLT, Defendant and  
Appellant.

No. 82-199.

Submitted Dec. 9, 1982.  
Decided April 28, 1983.

State auditor appealed from judgment of the First Judicial District Court, Lewis and Clark County, Peter G. Meloy, J., declaring unconstitutional two statutes imposing sanctions on district judges and Supreme Court judges if decisions are not reached or opinions are not written within procedural constraints and time limits set by the statutes. The Supreme Court, Shea, J., held that: (1) statutes violate constitutional separation-of-powers doctrine, constitutional prohibition on diminishing judicial salaries during term of office and impairment of contract clauses of Federal and State Constitutions, and (2) statutes were not authorized under constitutional provision giving Supreme Court rule-making power, subject to legislative veto.

Affirmed.

West Headnotes

[1] Constitutional Law ☞55  
92k55

[1] Judges ☞22(2)  
227k22(2)

Under the separation-of-powers clause, question of when cases shall be decided and manner in which they shall be decided is a matter solely for the judicial branches of government and statutes providing for forfeiture of one month's pay of a judge if a decision is not reached or opinion written within 90 days of submission violate the separation-of-powers clause, notwithstanding that order directing State Auditor to forfeit one month's pay was to be issued by the Supreme Court. MCA 3-2-104, 3-5-212; Const. Art. 3, § 1.

[2] Judges ☞22(9)  
227k22(9)

Constitutional provision requiring legislature to insure strict accountabilities of revenues received by the state and constitutional provision requiring legislature to create judicial standards commission did not give legislature power to enact statutes imposing time limits on judicial decision making and directing Supreme Court to order state auditor to withhold one month's pay of a judge for a violation. MCA 3-2-104, 3-5-212; Const. Art. 3, § 1; Art. 7, § 11; Art. 8, § 12.

[3] Judges ☞22(7)  
227k22(7)

Constitutional provision prohibiting diminution of salaries during term of office is designed to remove from lawmakers the temptation to exert control over other branches by promise or reward in form of increased compensation or threats of punishment by way of reduced salaries. Const. Art. 7, § 7.

[4] Judges ☞22(2)  
227k22(2)

Fact that statutes authorizing forfeiture of one month's pay where decision is not reached or opinion written within specified time limit is administered by the courts, in that the Supreme Court is to order the State Auditor not to issue a warrant for one month's pay, does not save the statutes from finding of unconstitutionality as reducing judicial salaries during term of office. MCA 3-2-104, 3-5-212; Const. Art. 7, § 7.

[5] Constitutional Law ☞140(1)  
92k140(1)

[5] Judges ☞22(2)  
227k22(2)

Statute providing that judicial decisions must be reached or opinions written within specified time limit, on penalty of forfeiture of one month's judicial pay, violate the impairment of contract clauses of the State and Federal Constitutions. MCA 2-16-406, 3-2-104, 3-5-212; Const. Art. 2, § 31; U.S.C.A. Const. Art. 1, § 10, cl. 1.

[6] Constitutional Law ☞55  
92k55

Once a legislative veto is exercised over a rule of procedure promulgated by the Supreme Court, the legislature is not empowered to fill the vacuum by enacting its own legislation governing appellate procedure or lower court procedure. Const. Art. 7, § 2(3).

[7] Judges ⇔ 22(9)  
227k22(9)

Constitutional provision giving rule-making power to the Supreme Court and veto power to the legislature did not authorize enactment of statute providing for forfeiture of one month's pay if a judge did not reach a decision or write an opinion within specified time limits. MCA 3-2-104, 3-5-212; Const. Art. 7, § 2(3)

\*\*592 \*489 Mike Greely, Atty. Gen., Mike McGrath argued, Asst. Atty. Gen., Jayne F. Mitchell argued, Helena, for defendant and appellant.

Leaphart Law Firm, W. William Leaphart argued, Helena, \*490 for plaintiff and respondent.

John W. Northey, Helena, for amicus curiae.

SHEA, Justice.

The defendant, E.V. "Sonny" Omholt, Auditor of the State of Montana, appeals from a Lewis and Clark County District Court judgment which declared unconstitutional two statutes which imposed sanctions on district judges and Supreme Court judges if decisions are not reached or opinions are not written within the procedural constraints and time limits set by the statutes.

\*\*593 The District Court declared the statutes unconstitutional on three grounds. First, in attempting to regulate the internal operations of the judiciary by imposing procedures and time limits for reaching decisions, the statutes violated the separation of powers doctrine as set forth in Article III, § 1 of the Montana Constitution. Second, by requiring the forfeiture of one month's pay for a violation, the statutes violated Article VII, § 7(1) of the Montana Constitution which provides that judicial salaries must not be diminished during a term of office. Third, the forfeiture of pay provisions violated the impairment of contract clauses of Art. I, § 10 of the United States Constitution and Art. II, § 31, of the Montana Constitution. We affirm.

The statutes involved, sections 3-2-104 (applicable to Supreme Court justices) and 3-5-212, MCA (applicable to district judges), operate in essentially the same way. We summarize the operation of these statutes and we set forth the full text of the statutes in Appendix A to this opinion.

Both statutes provide that decisions must be reached or opinions written within 90 days of submission. If not, another procedure is invoked to allow 30 more days to reach the decision or write the opinion. On or before the 90th day of submission, a district judge or Supreme Court justice, must file an affidavit to the chief justice giving the case name and number and the reason for delay. The parties involved in the case must be given a copy of the affidavit. \*491 Upon timely filing of the affidavit, the judge or justice has an automatic 30 more days to reach a decision or to write the opinion. To justify further delay a judge or justice must file another affidavit to the Supreme Court before the expiration of the 120th day, which affidavit must establish good cause for the delay. A majority of the Supreme Court must determine whether additional time should be given to reach the decision or to write the opinion.

The statutes are imprecise as to when or how a violation occurs if the affidavits are timely filed. However, if no affidavit is filed on or before the 90th day of submission, or on or before the 120th day of submission, a violation is automatic. It appears also that if an affidavit is timely filed but good cause is not shown for an extension of time beyond the 120 days, either the Supreme Court by a majority vote, or a party to the case, may refer the case to the judicial standards commission.

Upon the commission receiving the matter it *appears* that further proceedings and a hearing are contemplated before the commission, although the statute does not so state. Nonetheless, once the judicial standards commission has acted and made a recommendation to the Supreme Court, it *appears* that the Supreme Court must then sit as a court of review to determine whether the commission's recommendation was proper. If there has been a failure to file an affidavit, it appears the commission must find a violation, and it further appears the Supreme Court would likewise have to find a violation. On the other hand, if the question is one of good cause for the delay, it appears that the commission and this Court are granted some discretion in determining whether a violation has

occurred.

If a violation is found this Court is compelled by statute to direct the state auditor to withhold a month's pay from the district judge or justice--this pay is forfeited.

The plaintiff, a district judge of the Sixteenth Judicial District, challenged the constitutionality of these statutes, and they were properly held to be unconstitutional on three \*492 grounds.

#### PART I. SEPARATION OF POWERS

[1] The essential question is whether the legislature, in enacting time limits and setting forth the enforcement procedures for judicial decision-making, has exercised a power that properly belongs to the judicial branch of government. We conclude that, based on the separation of powers clause of our state constitution, that the question of when cases shall be decided and the manner in which they shall be decided, is a matter solely for the judicial branch of government.

\*\*594 The separation of powers provision, contained in the general government section of Art. III, § 1, 1972 Montana Constitution, provides:

"The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted."

By this provision, each branch of government is made equal, coordinate, and independent. By this we do not mean absolute independence because "absolute independence" cannot exist in our form of government. It does mean, however, "... that the powers properly belonging to one department shall not be exercised by either of the others." *State v. Johnson* (1926), 75 Mont. 240, 243 P. 1073; *State ex rel. Judge v. Legislative Finance Com.* (1975), 168 Mont. 470, 543 P.2d 1317. With only one exception (*State ex rel. Emerald People's Util. v. Joseph* (Ore.1982), 292 Or. 357, 640 P.2d 1011), the Supreme Courts of those states called on to answer the question have declared that the essential nature of a constitutional court encompasses the right to determine when a judicial decision will be made.

These holdings are best summarized in a law review article \*493 entitled, *Legislative Control Over Judicial Rule-Making: A Problem in Constitutional Revision* (1958), 107 U.Pa.L.Rev. 1, 31-32:

"What the holdings do suggest is that there is a third realm of judicial activity, neither substantive nor adjective law, a realm of 'proceedings which are so vital to the efficient functioning of a court as to be beyond legislative power.' This is the area of minimum functional integrity of the courts, 'what is essential to the existence, dignity and functions of the court as a constitutional tribunal and from the very fact that it is a court.' Any statute which moves so far into this realm of judicial affairs as to dictate to a judge how he shall judge or how he shall comport himself in judging or which seeks to surround the act of judging with hampering conditions clearly offends the constitutional scheme of the separation of powers and will be held invalid."

The courts have recognized as the authors state, that certain judicial functions require that the courts alone determine how those functions are to be exercised. Even assuming the right under many state constitutions, and indeed, the need for the legislature to be involved in rule-making where the courts and the legislature have concurrent rule-making power, the authors state:

"Grant the necessity for concurrent jurisdiction in the field of procedure, immediately another problem presents itself. Should there not be some realm of judicial administration entirely free from legislative supervision? Or shall the legislature be permitted to dictate to the courts every detail of their internal regimen: command appellate courts to issue written opinions in every case, declare within what time cases shall be heard, deny to the court the power to issue its mandate until a prescribed period of time after judgment shall have elapsed? *There are spheres of activity so fundamental and so necessary to a court, so inherent in its very nature as a court, that to divest it of its absolute command within these spheres is to make meaningless the very phrase judicial power.*" (Emphasis added.) 107 \*494 U.Pa.L.Rev. at 29-30.

To the questions posed above the courts have answered with virtual unanimity that the separation of powers doctrine does not permit the legislature to intrude. For example, in *Houston v. Williams* (1859), 13 Cal. 24, the court struck down a statute which required that in all cases the California

Supreme Court must render a written opinion with reasons. The court said:

"If the Legislature can require the reasons for our decisions to be stated in writing, it can forbid their statement in writing, and enforce their oral announcement, or prescribe the paper upon which \*\*595 they shall be written, and the ink which shall be used. And yet no sane man will justify any absurd pretension, but where is the limit to this power if its exercise in any particular be admitted?" 13 Cal. at 25.

To the same effect, see *Vaughan v. Harp* (1887), 49 Ark. 160, 4 S.W. 751; *Ocampo v. Cabangis* (Pa.1910), 15 Phil. 626.

In *State ex rel. Kostas v. Johnson* (Ind.1946), 224 Ind. 540, 69 N.E.2d 592, the court struck down a statute which forbade a lower court to hold an issue under advisement for more than 60 days and which deprived the court of jurisdiction if no decision was reached within 90 days. In quoting from one of its previous cases, the court stated:

" 'Courts are an integral part of the government, and entirely independent, deriving their powers directly from the Constitution, in so far as such powers are not inherent in the very nature of the judiciary. A court of general jurisdiction, whether named in the Constitution or established in pursuance of the provisions of the Constitution, cannot be directed, controlled, or impeded in its functions by any of the other departments of the government. The security of human rights and the safety of free institutions require the absolute integrity and freedom of action of courts.' " 69 N.E.2d at 595.

In speaking directly to the statute, the court further stated:

\*495 "[T]he court and not the Legislature must be the judge of the order in which it will dispose of cases and what period of time proper disposition shall require. There may be, and probably are, abuses and unjustified delays by courts in the disposition of cases, but the remedy is within the judicial branch of the government, not the legislative, or perhaps at the polls when a delinquent judge comes up for reelection." 69 N.E.2d at 596.

In striking down a statute which limited the time within which Ohio courts could hear or determine the case, the Ohio Supreme Court in *Schario v. State* (Ohio 1922), 105 Ohio St. 535, 138 N.E. 63, declared:

"True, the general subject-matter of procedure by the parties to the cause, proscribing the manner of invoking the jurisdiction, the pleadings, and the time within which the jurisdiction shall be invoked, in short, the adjective law of the case, has always been regarded with the proper province of legislative action, yet *the legislative branch of the government is without constitutional authority to limit the judicial branch of the government in respect to when it shall hear or determine any cause of action within its lawful jurisdiction.*" (Emphasis added.) 138 N.E. at 64.

And in 1978, an Ohio court struck down a statute which set time limits for the trial courts to hear testimony on a creditor's claim, and which further provided that the trial court lost jurisdiction if the testimony was not heard within that time. In holding that the statute was directory only and that the court did not lose jurisdiction by a failure to hear testimony within the statutory time limits, the court said:

" 'An act of the General Assembly, attempting to peremptorily prescribe the time within which any court in the exercise of its judicial function shall hear or determine a matter properly within its jurisdiction, is a legislative invasion of judicial power, and, as such, is unreasonable and unconstitutional and therefore null and void.' " *In re McClintock* (1978), 58 Ohio Misc. 5, 388 N.E.2d 762, 766-767.

\*496 In *State v. Merialdo* (Nev.1954), 70 Nev. 322, 268 P.2d 922, the Nevada Supreme Court struck down a statute which required each district court judge, before receiving a monthly salary, to file an affidavit to the effect that the judge had no cases assigned for decision which were older than 90 days. The court held that this statute violated a section of the Nevada Constitution which provided that a judge's salary could not be reduced during his term of office. 268 P.2d at 925. The court further held that the statute violated the separation of powers clause of the Nevada Constitution. 268 P.2d at 926.

\*\*596 And, of course, other decisions have struck down legislation imposing time limits for judicial action. In *Waite v. Burgess* (Nev.1952), 69 Nev. 230, 245 P.2d 994, the Nevada Supreme Court struck down legislation which required judicial action within fixed time periods as being an unconstitutional interference with judicial functions. In *Sands v. Albert Pike Motor Hotel* (Ark.1968), 245 Ark. 755, 434 S.W.2d 288, the Arkansas Supreme Court struck

(Cite as: 203 Mont. 488, \*496, 662 P.2d 591, \*\*596)

down a statute which required the circuit court (the trial court) to affirm a workmen's compensation decision after it has been on file for 60 days. In *Resolute Ins. Co. v. Seventh Jud. Dist. Cr. of Okl. Co., Okl.* (W.D.Okla.1971), 336 F.Supp. 497, a federal judge struck down as an unconstitutional legislative interference with judicial functions, a requirement that a judge must hear a motion to set aside a bail bond forfeiture within 30 days of the motion.

The federal courts have struck down provisions of the Federal Speedy Trial Act on grounds that the requirements for trial within the statutory deadlines constitute an unconstitutional encroachment of the judiciary. The provisions were held to infringe on the constitutionally autonomous power of the judiciary--that is, to violate the separation of powers doctrine. See *United States v. Brainer* (D.Md.1981), 515 F.Supp. 627; and *United States v. Howard* (D.Md.1977), 440 F.Supp. 1106.

We make no attempt to catalog and discuss all the cases \*497 bearing on this issue. We emphasize also that defendant seems to concede that time limits within which judicial decisions must be made are properly questions to be decided by the judiciary. However, defendant nonetheless puts forth two arguments to uphold the validity of the statutes.

He first argues that the statutes are constitutional because it is the judiciary which will always be making the final decision of how much time should be allowed to reach a decision or to write an opinion, and as to whether a violation has occurred. Defendant ignores, however, several mandatory aspects of the statutes, which we have already mentioned. Defendant further ignores the fact that any action to be taken by the judiciary--including the forfeiture of one month's pay if a violation is found--is mandated by the statutes. As the District Court stated: "[n]othing is clearer than that it is the legislature which is commanding the forfeiture."

[2] Defendant next argues, without attempting to discuss the application of the separation of powers provision to these provisions, that two provisions of the Montana Constitution, when read together, can be construed to give the legislature the power to enact the statutes imposing time limits on judicial decision-making. He relies on Art. VIII, § 12, which provides that: "[t]he legislature shall by law insure strict accountability of all revenue received and

money spent by the state and counties, cities, towns, and all other local governmental entities." (Emphasis added.) He further relies on Art. VII, § 11, which, as it pertains here, requires the legislature to establish a five member judicial standards commission. It provides: "[t]he legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys."

The last clause of the separation of powers provision, Art. III, § 1, declares that one branch shall not exercise a power belonging to another branch "... except as in this constitution \*498 expressly directed or permitted." Even by the most liberal construction standards we cannot read either Art. VIII, § 12, above, or Art. VII, § 11, above, to mean that the drafters of these provisions intended that time limits on judicial decision-making would be imposed. In fact, defendant's interpretation cannot be reasonably implied.

Perhaps the trial court best described the effect of sections 3-2-104 and 3-5-212, MCA, in comparing them with an attempt by the judiciary to interfere with the internal operations of the legislature:

"The totality of the effect of Chapter 375 is to interfere with the internal operations \*\*597 of the judiciary in the same manner as if the judiciary would impose limitations on the legislature as to its internal operations, such as the number of committees, the time within which a committee must act, the time each legislator must attend the sessions, limiting the time of discussion, limiting the time one bill must pass from one house to the other and the like. All of these legislative functions are internal with the legislature and the constitution authorizing the legislature to govern its affairs without interference from the other constitutional branches of government."

## PART II. DIMINUTION OF SALARY AND IMPAIRMENT OF CONTRACT

Although our decision on the separation of powers issue is dispositive, we nonetheless proceed to the two additional grounds on which the trial court held the statutes to be unconstitutional--diminution of salary and impairment of salary. The salary forfeiture provisions clearly violate these constitutional provisions.

The penalty provisions of both statutes require a one month's forfeiture of pay in the event of a violation. Section 3-2-104, MCA, which applies to Supreme Court justices, provides in part that the Supreme Court "... shall order that the state auditor not issue a warrant for payment of services for 1 month, which pay is forfeited by the justice." \*499 Section 3-5-212, which applies to district judges, provides in part that the Supreme Court "... shall order that the state auditor not issue a warrant for payment of services for 1 month, which pay is forfeited by the judge." The trial court held that these statutes constitute both an unconstitutional diminution of salary and an unconstitutional impairment of contract.

The state constitutional prohibition against diminution of judicial salaries during terms of office provides that "[a]ll justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office." Art. VII, § 7(1). The federal constitutional prohibition against impairment of contracts, Art. I, § 10, provides in part: "no state shall ... pass any ... law impairing the obligation of contracts ..." The state constitutional prohibition against impairment of contracts, Art. II, § 31, provides: "[n]o ... law impairing the obligation of contracts ... shall be passed by the legislature."

In arguing that the prohibition against reduction of judicial salaries is not violated, defendant in effect argues that the legislature can do indirectly what it is prohibited from doing directly. Defendant concedes that the statute mandates a reduction in salary but argues that if the judiciary imposes the sanctions rather than the legislature, the constitution is not violated. This argument, of course, ignores the fact that the judicially-imposed reductions are mandated by the statutes.

And assuming that the legislature can indirectly violate the constitution by imposing the duties on the Supreme Court to forfeit the salaries of judges who do not comply with the challenged statutes, the defendant next argues that the contract impairment clauses of the United States and Montana Constitutions are not violated because the legislature has reserved to itself the authority to condition payment of salaries on performance of all services required. As applied here, defendant claims that the legislature can withhold judicial salaries if a judge does not reach a decision \*500 within the time limits set by the challenged statutes.

[3] A constitutional provision prohibiting diminution of salaries during the term of office is designed to remove from lawmakers the temptation to exert control over the other branches by promise of reward in the form of increased compensation or threats of punishment by way of reduced salaries. *State ex rel. Jackson v. Porter* (1920), 57 Mont. 343, 188 P. 375. In *Jackson*, we so interpreted the 1889 provision which applied to all elected public officers. The 1889 Constitution also contained a provision applying only to judges. Art. VIII, § 29, expressly prohibited the salaries of judges from being increased or decreased. The provision with respect to all public officials \*\*598 was not carried over to our 1972 Constitution; however, a similar provision applying to judges was, of course, placed in the 1972 Constitution. Art. VII, § 7 of our present Constitution, although now applying only to judicial compensation, still embodies the fundamental policy considerations set forth in *Jackson*. See also *Merildo*, supra, 268 P.2d at 925, where the Nevada Supreme Court so interpreted the judicial article of the Nevada Constitution which prohibits judicial salary reductions during a term of office. This was one ground on which the Nevada court struck down statutes setting deadlines for judicial opinions and requiring affidavits of compliance as a condition of getting paid.

[4] We will not, as the defendant urges, sanction an indirect violation of the Constitution by upholding a scheme for reduction of salaries mandated by the legislature but administered by the courts. We must, therefore, conclude that the challenged statutes violate Art. VII, § 7 of our Constitution forbidding a reduction of judicial salaries during a term of office.

[5] Assuming, however, that it is permissible to indirectly violate an express mandate of the Constitution, the statutes challenged here nonetheless cannot survive a challenge that they violate the impairment of contract clauses of our State and Federal Constitutions.

\*501 In *Olson v. Cory* (1980), 27 Cal.3d 203, 164 Cal.Rptr. 217, 609 P.2d 991, the California Supreme Court interpreted the impairment clauses as it affects the judiciary's right to salary set by statute. The court held that a judge entering office does so partly in consideration of the salary benefits then offered by the state for that office. The court held that if those salary benefits are reduced by the legislature during a judge's term of office or during the unexpired term of

(Cite as: 203 Mont. 488, \*501, 662 P.2d 591, \*\*598)

a predecessor judge, the judge is nonetheless entitled to the contract for benefits during the remainder of the term. In applying the impairment clause the court stated:

"Public employment gives rise to certain obligations which are protected by the contract clause of the Constitution. [Citations omitted.] Promised compensation is one such protected right. [Citations omitted.] Once vested, the right to compensation cannot be eliminated without unconstitutionally impairing the contract obligation. [Citations omitted.] When agreement of employment between the state and public employees have been adopted by governing bodies, such agreements are binding and constitutionally protected." 164 Cal.Rptr. at 220-21, 609 P.2d at 994.

Although defendant concedes the constitutional protection accorded judicial salaries through the impairment clauses, the argument nonetheless is made that no impairment exists if there is a *statutory* basis for the legislature to condition payment of salary on performance of all services required. Applied here, defendant argues that the legislature can properly condition payment of judicial salaries based on timely filing of affidavits and timely filing of judicial decisions. Defendant argues that "... such failure on the part of a justice or judge constitutes a non-performance of required services justifying the withholding of the warrant. Clearly, a justice or judge has no contractual right to expect payment of service he has not rendered."

In searching for a statutory basis for the legislature to condition payment, defendant cites but does not quote section 2-16-406, MCA, a statute having absolutely no application \*502 to this case. This statute, in a most general way, specifies which services rendered by *all elected state officials* must be considered as falling within the duties for which they are paid their annual salaries. Neither withholding of nor forfeiture of judicial salaries is contemplated by this statute.

Section 2-16-406, has been in existence since 1895, although it has been amended several times over the years. It is part of that chapter dealing with salaries of the following elected *state* officials: the Governor, Lieutenant Governor, Chief Justice and Justices [it does not cover salaries of District \*\*599 Court Judges], Attorney General, State Auditor [the defendant here], Superintendent of Public Instruction, Public Service Commissioners, Secretary of State, and Clerk of the Supreme Court. The preceding

statute (section 2-16-405, MCA) establishes the annual salaries for the elected state officials mentioned here. Section 2-16-406 specifies, in a most general way, the duties that must be performed for the salary received. It provides:

"(1) The salary of each such officer shall be for all services required of him or which may hereafter devolve upon him by law, including all services rendered *ex officio* as a member of any board, commission, or committee, but shall not include actual necessary travel,<sup>43</sup> lodging, and subsistence expenses incidental to his official duties.

"(2) Unless otherwise provided by law, the salaries of officers must be paid out of the general fund in the state treasury monthly on the last day of the month."

Defendant's interpretation of this statute renders it subject to the same constitutional objections made concerning the challenged statutes here. We need not belabor the point, however, because this interpretation is so clearly in error. In effect, defendant argues that the legislature can withhold or forfeit the salaries of all state officials covered by the statute. Suffice to say that this interpretation will undoubtedly come as a great shock to those state officials who claim a right to their salaries without a requirement that they file affidavits or perform their duties within a \*503 specified time.

We have held that the challenged statutes violate Art. VII, § 7(1), which empowers the legislature to set judicial salaries subject to the restriction that such salaries cannot be reduced during a term of office. The legislature cannot directly establish an annual salary by one statute and then indirectly take away any part of that salary by a statute that imposes a forfeiture because an affidavit has not been filed or a decision has not been filed within the time limits set by the challenged statutes. These forfeiture provisions just as clearly violate the impairment of contract clauses of the State and Federal Constitutions.

### PART III. THE APPLICATION OF ARTICLE VII, § 2(3)

In light of our holdings in Parts I and II declaring the challenged statutes to be unconstitutional, we think it important to discuss the role of the courts and the legislature as they relate to rule-making for the courts. The roles are specified in Art. VII, § 2(3), which provides:

"It [the Supreme Court] may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation."

The 1889 Constitution did not contain such a provision. The judicial article was silent on the role of the Supreme Court in making appellate rules of practice or civil rules of practice. It was simply assumed that the legislature had unrestricted authority to legislate in this area. In fact, before the 1972 Constitution, any authority of the Supreme Court in adopting either appellate rules of procedure or civil rules of procedure, came expressly from the legislature, with the legislature reserving the right to repeal any rules promulgated pursuant to this legislative authorization. See sections 3-2-701 through 3-2-708, MCA, enacted in 1963. Clearly, with the adoption of the 1972 Constitution, sections 3-2-701 through 3-2-708, were impliedly repealed, for \*504 Art. VII, § 2(3) vests the rule-making authority in the Supreme Court subject only to legislative veto. This provision changed the roles of the Supreme Court and the legislature.

We have had only one occasion to interpret this clause in an opinion. In *Matter of McCabe* (1975), 168 Mont. 334, 544 P.2d 825, the issue was whether the legislature or this Court could set the standards for admission to the bar. In interpreting Art. VII, § 2(3) we held that this Court has the exclusive control over admission to the bar and conduct of members of the bar. Concerning the remaining portion of (3) we stated:

\*\*600 "The second sentence of subdivision (3) obviously means, without the necessity for any strained construction, that as to rules of appellate procedure and rules of procedure for other courts, such as the Montana Rules of Civil Procedure, the promulgation of such rules is subject to disapproval by the legislature." 168 Mont. at 339, 544 P.2d at 828.

[6] Without question, Art. VII, § 2(3) vests in the Supreme Court the authority to adopt rules for appellate procedure and trial and appellate procedures "for all other courts." Just as clearly, the legislature is empowered to veto any such rules promulgated by this Court. However, once a legislative veto is exercised, the legislature is not empowered to fill the vacuum by enacting its own legislation governing

appellate procedure or lower court procedure.

[7] We have held in Part I of this opinion that the challenged statutes constitute a direct infringement on the functional and constitutional integrity of the judiciary as a separate branch of government, and therefore that the statutes violate the separation of powers clause (Art. III, § 1) of our State Constitution. The constitutional provision giving rule-making power to the Supreme Court and veto power to the legislature, does not encompass the kind of legislation embodied in the challenged statutes. We held that time limits within which judicial decisions must be reached, fall within what we recognized as the "... third realm of judicial activity, neither substantive nor adjective [procedural] \*505 law, a realm of 'proceedings which are so vital to the effective functioning of the courts as to go beyond legislative power.'" 107 U.Pa.L.Rev. at 31-32. The internal operations of the courts, this third realm of judicial proceedings, are not subject to legislative veto:

"A constitutional [provision such as Art. VII, § 2(3)] which expressly reserves ultimate authority over procedure to the legislature need not be feared as sanctioning legislative invasion of this last judicial stronghold.... So long as a constitution maintains the fundamental separation of powers [Art. III, § 16, 1972 Mont.Const.] this area of functional independence of the judiciary will be preserved in the very grant of judicial power." 107 U.Pa.L.Rev. at 33.

If we held, however, that the separation of powers doctrine was not violated, we would then be required to examine the statutes in light of Art. VII, § 2(3), which gives only the veto power to the legislature. The question would be whether the legislature, in the face of Art. VII, § 2(3), could validly enact statutes setting time limits (with sanctions other than a forfeiture or loss of judicial salary) for the judiciary to reach its decisions. Again, we would be required to strike down the legislation as having gone beyond the authority conferred on the legislature as provided for in this constitutional provision.

The trial court aptly described the situation that would exist if the statutes were considered to be procedural rules and therefore necessarily subject to the requirements and restrictions of Art. VII, § 2(3):

"Chapter 375 [sections 3-2-104 and 3-5-212] is a statute which attempts to govern the internal conduct of judicial business. Like the rules governing conduct of members of the bar, it is not a procedural

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rule within the meaning of the Montana Constitution, Article VII, Section 2(3). Even if the Supreme Court adopted the language of Chapter 375 as a procedural rule, the legislature has only the power, under Article VII, of the Montana Constitution to disapprove."

It is therefore clear that if in Parts I and II of this opinion \*506 we did not find the constitutional violations complained of, we would nonetheless be required to hold that the legislature exceeded its constitutional power under Art. VII, § 2(3) in enacting the legislation.

For all of these reasons we hold the challenged statutes to be unconstitutional. The judgment of the District Court is affirmed.

HASWELL, C.J., and HARRISON, WEBER, SHEEHY, MORRISON and DALY, JJ., concur.

#### \*\*601 APPENDIX A

3-2-104. Salaries--expenses. (1) The salaries of justices of the Supreme Court are provided for in 2-16-405.

(2) If any cause, motion, or other proceeding remains pending and undecided for a period of 90 days after submission for decision, the justice of the Supreme Court who has been assigned to write the opinion, order, or decision of the court shall submit an affidavit on or before the 90th day to the chief justice setting forth the case name, cause number, and the reason the matter has not been decided. Copies of the affidavit must be furnished to all parties to the matter pending. A cause, motion, or other proceeding is considered submitted for decision when all hearings have been held and final briefs have been submitted by all parties to the matter pending. Upon the filing of the affidavit, the justice shall have an additional 30 days to decide the matter which has been submitted. No cause, motion, or other proceeding may remain undecided for more than 120 days after submission for decision without the approval of a majority of the other members of the Supreme Court for good cause shown in an affidavit requesting additional time. If a justice of the Supreme Court violates the provisions of this section, any party to a matter pending in violation of this section or, by a majority

vote, the other members of the Supreme Court may refer the matter to the judicial standards \*507 commission. If the Court, acting upon the recommendation of the commission, determines the Justice is not in compliance with this section, it shall order that the State Auditor not issue a warrant for payment of services for 1 month, which pay is forfeited by the justice.

(3) Actual and necessary travel expenses of the justices of the Supreme Court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties.

3-5-212. Submission of affidavit--payment of salary--commission to determine compliance. (1) If any cause, motion, or other proceeding remains pending and undecided for a period of 90 days after submission for decision, the district court judge before whom the matter is pending shall submit an affidavit on or before the 90th day to the Chief Justice of the Supreme Court setting forth the case name, cause number, and the reason the matter has not been decided. Copies of the affidavit must be furnished to all parties to the matter pending. A cause, motion, or other proceeding is considered submitted for decision when all hearings have been held and final briefs have been submitted by all parties to the matter pending. Upon the filing of the affidavit, the district judge shall have an additional 30 days to decide the matter which has been submitted. No cause, motion, or other proceeding may remain undecided for more than 120 days after submission for decision without the approval of a majority of the Supreme Court for good cause shown in an affidavit requesting additional time.

(2) If a district judge violates the provisions of this section, any party to a matter pending in violation of this section or, by a majority vote, the Supreme Court may refer the matter to the judicial standards commission.

(3) If the Supreme Court, acting upon the recommendation of the commission, determines that the judge is not in compliance with this section, it shall order that the State \*508 Auditor not issue a warrant for payment of services for 1 month, which pay is forfeited by the judge.

END OF DOCUMENT

Supreme Court of Nevada.

STATE ex rel. WATSON  
v.  
MERIALDO.

No. 3786.

March 29, 1954.  
Rehearing Denied April 12, 1954.

Original mandamus proceedings by district court judge to compel state controller to deliver to him warrants for payment of his salary notwithstanding petitioner's failure to file an affidavit that no case, which had been submitted for more than 90 days remained undecided. The Supreme Court, Badt, J., held that the statute, requiring each district judge, before receiving any monthly salary, to file an affidavit setting forth, inter alia, that no case which had been submitted to him as district judge for a period of more than 90 days remained undecided, was unconstitutional.

Writ issued.

West Headnotes

[1] Constitutional Law ☞ 67  
92k67

The courts possess the entire body of intrinsic judicial power of the state. Const. art. 3, § 1.

[2] Constitutional Law ☞ 52  
92k52

[2] Constitutional Law ☞ 79  
92k79

Neither legislative nor executive branch of the government may assume to exercise any part of intrinsic judicial power of the state, and district court cannot be directed, controlled or impeded in its functions by either of those branches. Const. art. 3, § 1.

[3] Constitutional Law ☞ 55  
92k55

[3] Judges ☞ 22(2)  
227k22(2)

Statute imposing no forfeiture but requiring each district court judge, before receiving any monthly salary, to file an affidavit setting forth that no case which has been submitted to him as district judge for a period of more than 90 days, remains undecided, has effect of coercing filing of decisions within 90 days, and therefore exceeds constitutional power of legislature to fix compensation of judges and violates separation of powers provision of constitution. N.C.L.1929, § 8433, as amended Laws 1953, c. 54; Const. art. 3, § 1; art. 6, § 15.

[4] Constitutional Law ☞ 55  
92k55

[4] Judges ☞ 22(2)  
227k22(2)

Statute requiring each Supreme Court justice, before receiving any monthly salary, to file affidavit setting forth that no case has been assigned to him for preparation of opinion for more than 90 days, has effect of coercing filing of decisions within 90 days, and therefore exceeds constitutional power of legislature to fix compensation of judges and violates separation of powers provision of constitution. N.C.L.1929, § 8433, as amended, Laws 1953, c. 54; Const. art. 3, § 1; art. 6, § 15.

\*\*923 \*322 George E. Marshall, Las Vegas, for petitioner.

W. T. Matnews, Atty. Gen., George P. Annand, William N. Dunseath, John W. Barrett, Deputy Attys. Gen., for respondent.

\*323 BADT, Justice.

This petition presents for determination the question of the constitutionality of § 8433, N.C.L.1929, as amended, requiring a district judge, before he may receive his monthly salary, to file an affidavit with the controller showing that no cases remain undecided which have been submitted to him for more than ninety days. We hold that the statute in question violates constitutional limitations.

Petitioner is the duly elected, qualified and acting judge of the Seventh Judicial District Court of the State of Nevada, in and for the Counties of White Pine and Lincoln and the legislature heretofore fixed his salary at \$7,200 per year, payable in monthly installments. He alleges that respondent state controller refuses to deliver his warrants for his salary

for the past seven months, which refusal is based upon the petitioner's failure to execute the affidavit required by the statute, but that such statute is in violation of the constitution, is void and of no effect and is no justification for the controller's refusal to deliver the warrants. [FN1]

FN1. When this matter became at issue before us upon the complete filing of the briefs, counsel for both parties tendered an oral stipulation for the submission thereof on the briefs and without oral argument. We entered an order refusing to honor this stipulation, for the reason that many matters in connection with petitioner's refusal to sign the affidavit had come to the attention of the court and caused the court great concern and that the court desired to make certain inquiries of counsel. Upon the conclusion of the oral argument we ordered that there be furnished to the court certificates from each county clerk in the state indicating what if any cases argued and submitted to petitioner remained undecided after being submitted for a period over ninety days. The attorney general thereafter filed certificates from each county clerk, from which it appeared that no cases remained thus undecided. We thereupon ordered this matter submitted.

The act in question is § 8433, N.C.L.1929, as \*324 amended by Stats.1953, c. 54, p. 49, reading as follows:

'Section 1. Section 5 of the above-entitled act, being section 8433, N.C.L., 1929, is hereby amended to read as follows:

'Section 5. Each district judge shall, before receiving any monthly salary, file with the clerk of each county within his district and with \*\*924 the state controller, an affidavit in which shall be set forth the number of cases, motions or other matters submitted to him as such district judge, regardless of the district in which he was sitting at the time of the submission of said cases, motions or other matters which remain undecided, and that no such case, motion or matter remains undecided which has been submitted for a period of more than ninety days.

'Sec. 2. This act shall be effective upon passage and approval.'

The section before the 1953 amendment, enacted in 1913, was restricted to cases submitted to the judge when sitting in his own district. The original act, Stats.1891, c. 25, p. 28, was entitled 'An Act to prevent unnecessary delay in rendering judicial decisions by the Courts of this State.' It contained but two sections and required among other things that 'No

\* \* \* Judge of the District Court \* \* \* be allowed to draw or receive any monthly salary unless he shall take and subscribe an affidavit \* \* \* that no cause in his court remains undecided that has been submitted for the period of ninety days.' Section 2 required the filing of the affidavit with the state controller. The 1913 act, amended in 1953, is entitled, in part, 'to prevent unnecessary delay in rendering judicial decisions'. The constitutional provisions involved are Section 15 of Article VI of the constitution, concerning the compensation of judicial officers and section 1 of Article III concerning the division of the powers of the government. The first of these reads, in part, as follows:

'Compensation of Judicial Officers. § 15. The justices of the supreme court and district judges shall each \*325 receive quarterly for their services a compensation to be fixed by law, and which shall not be increased or diminished during the term for which they shall have been elected, \* \* \*'

The second reads as follows:

'The powers of the government of the State of Nevada shall be divided into three separate departments--the legislative, the executive, and the judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.'

In *Ratliff v. Sadlier*, 53 Nev. 292, 299 P. 674, 675, a judgment was attacked as being coram non judge and void because in violation of § 5227, Revised Laws of 1912, reading in part: 'Upon a trial of a question of fact by the court its decision must be given \* \* \* within thirty days after the cause is submitted for decision.' This court held the statute to be directory merely.

In the recent case of *Waite v. Burgess*, 69 Nev. 230, 245 P.2d 994, 996, a motion was made to dismiss the appeal by reason of the statute providing that unless sureties on an appeal bond, after exception to their sufficiency, justify before the judge within five days, on notice, the appeal shall be regarded as if no such undertaking had been given. The filing of the undertaking being a jurisdictional requirement, such failure would then have invalidated the attempted appeal. The appellant had appeared with his sureties, within time, for such justification but the matter was set down by the judge for a later date beyond the five day period. This court held that the statute 'should be

construed as demanding diligence on the part of the litigants rather than as an oppression upon the judge's duties of deliberation and of orderly administration of justice \* \* \* [and] should be regarded as directory only', when relating to judicial functions. Of special importance to the present case is this language used by the court:

\*326 'It is recognized that legislation undertaking to require judicial action within fixed periods of time is an unconstitutional legislative interference with judicial functions. *State ex rel. Kostas v. Johnson*, 224 Ind. 540, 69 N.E.2d 592, 168 A.L.R. 1118; *Atchison, Topeka & Santa Fe Ry. Co. v. \*\*925 Long*, 122 Okl. 86, 251 P. 486; *Schario v. State*, 105 Ohio St. 535, 138 N.E. 63, 64. In *Schario v. State*, supra, it was stated: 'Whether or not justice is administered without 'denial or delay' is a matter for which the judges are answerable to the people, and not to the General Assembly of Ohio. Manifestly, when a case can be heard and determined by a court must necessarily depend very largely upon the court docket, the quantity of business submitted to the court, the nature, the importance, and the difficulties attending the just and legal solution of matters involved.'

[1][2] The *Indiana*, *Oklahoma* and *Ohio* cases cited in *Waite v. Burgess*, supra, all hold firmly, under constitutional provisions similar to our own, that the legislative branch of the government may not constitutionally limit the judicial branch in respect to the time within which it shall determine cases within its jurisdiction. They held, under similar but not precisely the same conditions, that old and well established principles were involved--the separation and independence of the three branches of government. Nothing can be clearer than that, under our constitutional provision, our courts 'possess the entire body of the intrinsic judicial power of the state'. [224 Ind. 540, 69 N.E.2d 594.] This being so, neither the legislative nor the executive branches of the government may assume to exercise any part of that judicial power, and the district court cannot be directed or controlled or impeded in its functions 'by either of those branches.' *State ex rel. Kitzmeyer v. Davis*, 26 Mev. 373, 68 P. 689. See also *Ex parte Tully*, 4 Ark. 220, 38 Am.Dec. 33.

Respondent seeks to distinguish the cases above \*327 referred to by pointing to language in those decisions indicating that the action taken in striking down the several legislative acts involved was because such acts sought to deprive the court of a constitutionally vested

jurisdiction to hear and determine certain cases. We think the cases go much further. They emphasize the wisdom of constitutional provisions guarding the independence of the judiciary and protecting it against all unwarrantable interference concerning the payment of salaries. They deplore any attempt that might 'bend the judiciary into mere instruments' of the will of the legislature or might 'drive or degrade judges from the bench' by depriving them of parts of their compensation. Even in California, where provisions similar to our statute are written into the state constitution, it was said in *Wyatt v. Arnot*, 7 Cal.App. 221, 94 P. 86, 89: 'We think it is clear that the matter of the time when a judge may decide a case submitted to him for decision is as much a matter of judicial discretion and judgment as the matter of how he may decide it.'

[3] Respondent contends that § 8433, N.C.L.1929, as amended, Stats.1953, p. 49, imposes no forfeiture for failure of a judge to decide a case within ninety days after submission, deducts nothing from his salary and subjects him only to a delay until such time as he may bring himself within the statute. We do not find this convincing. The withholding of a judge's salary for weeks or months might indeed be just as embarrassing and detrimental as an actual forfeiture of a part of such salary. Records submitted on appeal to this court sometimes contain thousands of pages of testimony and exhibits. A jury case recently tried in one of our district courts occupied some fifty court days. Consideration of a motion for new trial in that case might have required a study of that entire record and a decision could not conceivably have been expected within ninety days of the submission of the motion. Respondent suggests that in \*328 cases of that kind counsel are ordinarily agreeable to stipulating for a resubmission. This does not remove the onus of the statute. Counsel may refuse to stipulate, and an order of resubmission may not be made, under section six of the act, without written stipulation.

Respondent refers us to several California cases but, as we have noted, the California provision appears in its constitution. \*\*926 Respondent concedes that if the statute commanded the judge to render his decision within ninety days, such situation would come within the condemnatory language found in the cases cited. The coercive means employed by the statute approach so closely to the actual command, however, that we do not consider the distinction important.

Respondent relies on *State v. Atherton*, 19 Nev. 332, 10 P. 901, upholding the provisions of section 6 of the Act of March 4, 1885. Stats.1885, p. 60, General Stats.1885, § 2490, providing for payment of salaries monthly to the district judges out of the special fund created by the quarterly payments into said fund by the treasurers of the respective counties of the sums fixed by the redistricting act. This court there contented itself with the simple statement that there was no constitutional objection to such method of payment, and that the provision for payment in monthly installments did not violate the provisions of section 15 of Article VI of the constitution. We do not find in the *Atherton* case any support for the present act.

We conclude that under the act in question the limitations placed by the legislature upon the right of a district judge to be paid his compensation exceeded the grant of power provided in section 15 of Article VI, and that the coercion placed upon district judges to cause them to file their decisions within ninety days was likewise a violation of the provisions of section 1 of Article III of the state constitution. Such being the case and the state controller having advanced no other reason for \*329 his refusal to deliver the warrants in question, the writ of mandate must issue as prayed for. It is so ordered.

EATHER, C. J., and MERRILL, J., concur.

On Petition for Rehearing.

PER CURIAM.

[4] Respondent, conceding that the original petition attacked only § 8433, N.C.L.1929, as amended, being § 5 of 'An act in relation to courts of record, to prevent unnecessary delay in rendering judicial decisions, \* \* \*,' now asserts that our order granting the precise relief prayed for, leaves in doubt the validity of the remaining seven sections of the entire act. He calls our attention to the fact that § 2 of the act, being § 8430, N.C.L.1929, requires, among other things, that each of the supreme court justices, before receiving any monthly salary, shall file in his office an affidavit reciting that no case has been assigned to him for preparation of opinion for more than ninety days etc.; that we have not struck down said § 2 and that the respondent state controller needs the aid of this court as a guide to his official duties under § 2 and other sections of the act.

We think it clear from our opinion that § 2 of the act, being § 8430, N.C.L.1929, is subject to the same infirmities as § 5, § 8433, N.C.L.1929, and we so hold. No official duties of the state controller are affected by any of the remaining six sections, and further consideration of such sections would be unwarranted in this proceeding.

Rehearing denied.

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Supreme Court of Wisconsin.

In the Matter of the Complaint Against Judge  
Warren A. GRADY, Circuit Court  
Judge, Branch 2, Ozaukee County, Wisconsin.

No. 82-2234-J.

Argued Jan. 4, 1984.  
Decided May 30, 1984.

In judicial disciplinary proceeding, the Supreme Court held that: (1) statute, establishing time limits within which judges are to decide cases and conditioning receipt of salary upon compliance with statute, concerns efficient and effective functioning of court system, a matter of court administration within exclusive authority of judicial branch of government and, hence, statute represents unconstitutional intrusion by legislature into that area; (2) Supreme Court would adopt rule establishing times within which a judge shall be expected to decide matters after submission in final form and requiring judge to report to judicial administrative authorities on regular basis the status of cases pending beyond that time period; and (3) failure of circuit court judge to be prompt in performance of his duties and to organize his court and supervise court personnel so that business of the court can be dispatched with promptness and convenience, constituting "judicial misconduct," together with filing of affidavit forms with knowledge that they misrepresent status of pending cases, warrants reprimand.

Reprimand ordered.

Abrahamson, J., concurred in part and filed opinion.

Ceci, J., concurred and filed opinion.

West Headnotes

[1] Judges ↻ 11(8)  
227k11(8)

Findings of fact made by panel in judicial disciplinary proceedings must be accepted unless they are against great weight and clear preponderance of the evidence.

[2] Constitutional Law ↻ 42(1)  
92k42(1)

Person charged with violation of statute has

fundamental due process right to challenge constitutionality of that statute. U.S.C.A. Const. Amend. 14.

[3] Constitutional Law ↻ 42.1(1)  
92k42.1(1)

Circuit court judge charged with judicial misconduct for having persistently failed to perform official duty to comply with provisions of statute has personal stake in outcome of proceeding and, therefore, has standing to challenge constitutionality of the statute, since he may merit discipline for misconduct if statute constitutionally establishes judicial duties. W.S.A. 757.025.

[4] Constitutional Law ↻ 45  
92k45

Even if circuit court judge did not have standing to attack constitutionality of statute establishing judicial duties, the Supreme Court could raise and decide the constitutional issue sua sponte, since the statute affects the judicial system of the state. W.S.A. 757.025; W.S.A. Const. Art. 7, § 3(1).

[5] Constitutional Law ↻ 50  
92k50

In certain areas of "shared power," one branch of government may exercise power conferred on another only to extent that it does not unduly burden or substantially interfere with the other branch's exercise of its power.

[6] Constitutional Law ↻ 50  
92k50

As to zones of authority constitutionally established for each branch of government upon which any other branch of government is prohibited from intruding, "unreasonable burden" or "substantial interference" test utilized in instances of "shared power" does not apply; any exercise of authority by another branch of government is unconstitutional.

[7] Constitutional Law ↻ 55  
92k55

[7] Judges ↻ 22(2)  
227k22(2)

Statute, establishing time limits within which judges

are to decide cases and conditioning receipt of salary upon compliance with statute concerns efficient and effective functioning of court system, a matter of court administration within exclusive authority of the Supreme Court and, hence, statute represents unconstitutional intrusion by legislature into that area of exclusive judicial authority. W.S.A. 757.025; W.S.A. Const. Art. 7, § 3(1).

[8] Courts ☞ 80(1)  
106k80(1)

Upon determining statute establishing time limits within which judges are to decide cases and conditioning receipt of salary upon compliance with statute to be unconstitutional legislative intrusion into area of exclusive judicial authority, the Supreme Court has adopted a rule providing reasonable time period for judicial decision making and procedures for certifying and giving to judicial administrative authorities notice of status of cases and need for additional time to dispose thereof. W.S.A. 757.025; W.S.A. Const. Art. 7, § 3(1).

[9] Judges ☞ 11(4)  
227k11(4)

Failure of circuit court judge to be prompt in performance of his duties and to organize his court and supervise court personnel so that business of the court can be dispatched with promptness and convenience, even though due in part to admittedly heavy caseload, constitutes "judicial misconduct" which, together with filing of affidavit forms with knowledge that they misrepresent status of pending cases, warrants reprimand. SCR 60.001 et seq., 60.01(4).

\*\*561 \*764 Daniel W. Hildebrand (argued), \*765 Ross & Stevens, S.C., and Natalie Smith, Madison, on brief, \*764 for the Judicial Commission of the State of Wisconsin.

\*765 William G. Bunk (argued), Patrick R. Griffin and Bunk, Doherty & Griffin, S.C., West Bend, on brief, for the Honorable Warren A. Grady.

PER CURIAM.

*Judicial disciplinary proceeding; reprimand imposed.*

We review, pursuant to sec. 757.91, Stats., the findings of fact, conclusions of law and

recommendation of the judicial conduct panel in the judicial disciplinary proceeding brought by the Judicial Commission against the Honorable Warren A. Grady, circuit judge for Ozaukee county, for his alleged persistent failure to perform official duties. The panel has recommended that Judge Grady be reprimanded for his persistent failure to be prompt in the performance of his official duties, his persistent failure to organize his court for the prompt disposition of judicial business, and his persistent failure to decide matters within the time period provided by sec. 757.025, and to file affidavits pursuant to that statute accurately reporting the status of undecided cases. The panel recognized that Judge Grady's delay in deciding cases is explained in part by the substantial number and increased variety of cases assigned to him following court reorganization in 1978. The panel also noted that during his twenty-one years as a county and circuit judge, Judge Grady has earned the reputation of being a hard-working, fair, and honorable judge and that he is now fully and timely performing his official duties established by sec. 757.025, Stats. While we do not accept all of the panel's conclusions, we agree that a reprimand of Judge Grady is appropriate discipline under the circumstances of this case.

\*766 The Judicial Commission's complaint, as amended, charged Judge Grady with the following judicial misconduct: [FN1]

FN1. In the context of judicial discipline, sec. 757.81(4), Stats., defines "misconduct" to include:

"(a) Wilful violation of a rule of the code of judicial ethics.

"(b) Wilful or persistent failure to perform official duties." The Code of Judicial Ethics, SCR chapter 60, prescribes standards of judicial conduct, including: SCR 60.01(4) "A judge should be prompt in the performance of his or her duties, recognizing that the time of litigants, jurors, witnesses and attorneys is of value. A judge should organize his or her court and supervise the personnel under his or her charge so that the business of the court is dispatched with promptness and convenience."

That Code also establishes rules of judicial conduct, which are "of sufficient gravity to warrant sanctions if they are not obeyed," SCR 60.02, including:

"SCR 60.13 A judge shall not indulge in gross personal misconduct."

"SCR 60.17 An aggravated and persistent failure to comply with the standards of SCR 60.01 is a rule violation."

(Cite as: 118 Wis.2d 762, \*766, 348 N.W.2d 559, \*\*561)

(1) the aggravated and persistent failure to be prompt in deciding cases and to organize his court for the prompt and efficient disposition of judicial business, alleged to constitute a willful violation of a rule of the Code of Judicial Ethics, SCR 60.01(4) and 60.17, sec. 757.81(4)(a), Stats.;

(2) the willful or persistent failure to render decisions in cases submitted to him in final form for decision within 90 days, plus an additional 90-day period of \*\*562 extension, as provided in sec. 757.025, Stats., alleged to constitute a willful or persistent failure to perform official duties, sec. 757.81(4)(b);

(3) the willful and persistent filing of forms purporting to be affidavits required by sec. 757.025, Stats., claiming entitlement to salary despite his persistent failure to render decisions within the 90-day time period specified in that statute or certify in the record of applicable \*767 cases his inability to do so, alleged to constitute gross personal misconduct, SCR 60.13, a willful violation of a rule of the Code of Judicial Ethics, sec. 757.81(4)(a), and a willful or persistent failure to perform official duties, sec. 757.81(4)(b).

The Judicial Commission subsequently withdrew by stipulation all allegations of gross personal misconduct and willful violation of the rules of the Code of Judicial Ethics. There remained the allegations that the judge's conduct constituted judicial misconduct as a willful or persistent failure to perform official duties.

[1] This judicial disciplinary proceeding was before the panel, consisting of the Honorable John A. Decker, Honorable Charles P. Dykman and Honorable John P. Foley, Presiding Judge, on stipulated facts, supplemented by testimony presented at a hearing. We will accept the panel's findings of fact unless those findings are clearly erroneous. This is the same standard of review expressed in prior judicial disciplinary proceedings that a panel's findings of fact must be accepted unless they are against the great weight and clear preponderance of the evidence. *In Matter of Complaint Against Seraphim*, 97 Wis.2d 485, 509, 294 N.W.2d 485 (1980), *Disciplinary Proceedings Against Guay*, 101 Wis.2d 171, 175, 303 N.W.2d 669 (1981). See, *Robertson-Ryan v. Pohlhammer*, 112 Wis.2d 583, 592 fn., 334 N.W.2d 246 (1983).

The panel made the following findings of fact consistent with a stipulation of the parties:

Between 1979 and 1982 Judge Grady's decision in each of 21 cases over which he presided was made more than six months after the case had been submitted to him in final form for decision. [FN2]

FN2. Of those 21 cases, six were decided less than a year after submission in final form, nine were decided between one and two years, three between two and three years, one between four and five years, and, the most extreme examples, two small claims actions for unpaid wages were decided more than seven years after all testimony, evidence and argument had been submitted to the judge.

\*768 As of June 3, 1982, there were at least 21 cases awaiting decision by Judge Grady, 14 of which had remained under submission for more than six months.

Judge Grady had no system for keeping track of cases so that those under submission for 90 days or more could be brought to his attention, although he initiated such a system after the Judicial Commission filed its complaint in this disciplinary proceeding. Each month of 1979 through 1982 Judge Grady signed and filed a form reciting, in part, "Being duly sworn, upon oath ... that, pursuant to section 757.025 of the statutes, [FN3] no matter or cause which was submitted in final form to me exceeds the time limit and that salary is due me for the above month." None of those recitations was truthful and accurate as to causes or matters submitted in final form to Judge Grady's court remaining undecided beyond the time period provided by sec. 757.025, \*\*563 Stats. Judge Grady knew that he had not completed decisions within 90 days after submission in final form and that he had not filed any certificates stating that he was unable to complete a decision in any given case within a 90-day period.

FN3. Section 757.025, Stats., provides:

"(1) No judge of a court of record may receive or be allowed to draw any salary, unless he or she first executes an affidavit stating that no cause or matter which has been submitted in final form to his or her court remains undecided that has been submitted for decision for 90 days, exclusive of the time that he or she has been actually disabled by sickness or unless extended by the judge under sub. (2). The affidavit shall be presented to and filed with every official who certifies in whole or in part, the judge's salary. "(2) If a judge is unable to complete a decision within the 90-day period specified in sub. (1), the judge shall so certify in the record and the period is thereupon extended for one additional

period of not to exceed 90 days."

As of August 25, 1983 Judge Grady had no cases submitted in final form which remained undecided for 90 days or longer, and, since February, 1983, Judge Grady has been prompt in the performance of his duties and \*769 has organized his court and supervised the personnel under his charge so that the business of his court is dispatched with promptness and convenience.

Judge Grady and his court reporter, David Wahlberg, testified before the panel that at the time Judge Grady signed the affidavit forms each month, Wahlberg, as notary public, did not administer an oath to Judge Grady prior to his signing the affidavit forms, although Wahlberg notarized each of those forms. On the basis of that uncontroverted testimony, the panel found that Judge Grady was not under oath when he executed the forms and that, although purporting to be affidavits, the forms were not affidavits. The panel also found that since March, 1983, Judge Grady has executed and filed affidavits under oath in compliance with sec. 757.025, Stats.

The panel concluded, based on the parties' stipulation, that Judge Grady's failure to be prompt in deciding cases and to organize his court so that its business could be dispatched with promptness and convenience, when measured against the standards set forth in SCR 60.01(4), Code of Judicial Ethics, constituted a persistent failure to perform official duties, defined as misconduct in sec. 757.81(4)(b), Stats. The panel also concluded that Judge Grady engaged in misconduct, as defined in that statute, by persistently failing to perform his official duties to decide matters within the time period established by sec. 757.025, and to file affidavits pursuant to that statute in order to draw his salary. This conclusion was based on the panel's determination that sec. 757.025, establishes an official duty of a judge to decide a matter within 90 days of its submission to the court in final form or, if unable to do so, to so certify on the record, thereby extending for one additional period of 90 days the time for deciding the matter, as well as an official duty of a judge to file an affidavit of compliance with that statute in order to draw any salary.

\*770 The parties entered into a second stipulation setting forth facts in mitigation of Judge Grady's conduct. On the basis of that stipulation, the panel made the following findings of fact:

Judge Grady's workload during the years 1979 through 1982 was heavy. [FN4]

FN4. For example, in calendar year 1982, 744 cases were filed in Judge Grady's court and 1065 cases were disposed of; these figures do not include uncontested traffic or forfeiture cases. During that same year Judge Grady presided over 38 jury trials, 96 trials to the court, 305 motion hearings, 150 default hearings, 98 arraignments or plea hearings in criminal matters; an additional 223 cases scheduled for trial were disposed of prior to trial. In addition, Judge Grady conducted or presided over an unknown number of pretrial conferences, status conferences, status hearings, sentencing hearings, and posttrial motion hearings.

As a result of court reorganization in 1978, Branch III in Ozaukee county was vacant from August 1, 1978, to July 31, 1979, during which time all cases docketed in that branch were assigned to Judge Grady.

Implementation of judicial rotation by Supreme Court Rule 70.23(3) and court reorganization resulted in Judge Grady's presiding over cases of an increasingly varied nature and required him to complete cases which had been assigned to judges of the former 24th judicial circuit.

Judge Grady had no law clerks, interns, secretary, fulltime clerk or commissioners working in his court.

Judge Grady's output of judicial business for calendar years 1979 through 1982 was substantial. During the relevant time period, Judge Grady exercised discretion in selecting the order in which he decided cases and \*\*564 assigned priority status to cases he felt required early decisions.

On the basis of these stipulated facts the panel found that during his 21 years as a judge of county and circuit courts, Judge Grady has earned the reputation of being a hard-working, fair and honorable judge, that he had a heavy caseload assignment during the years 1979 through 1982, and that he earned his salary during those \*771 years. The panel also concluded that Judge Grady is remorseful for his conduct, has publicly apologized for the inconvenience and hardship caused to litigants and the bar by his failure to perform his official duties, has executed and filed affidavits under oath in compliance with sec. 757.025, Stats., since March of 1983, and has given his complete cooperation to the panel in its conduct of the disciplinary proceedings.

As discipline, the panel recommends that Judge Grady be reprimanded for misconduct consisting of his persistent failure to perform official duties. In making that recommendation the panel acknowledges having balanced Judge Grady's misconduct against the mitigating factors. The panel stated, "Because respondent's misconduct is explained in part by factors beyond his control and because respondent has remedied behavior and practices within his control, the panel has concluded that a reprimand will sufficiently preserve the integrity of the judiciary and maintain public confidence in the judiciary."

The panel also notes that this is the first judicial disciplinary case charging that a judge's failure to comply with the provisions of sec. 757.025, Stats., constitutes misconduct, and it deems a reprimand sufficient to place other judges throughout the state on notice of the need for compliance with that statute. The panel suggests that in the event of future persistent noncompliance with the statute, more severe sanctions may be warranted.

From our review of the panel's findings of fact we find that they are not clearly erroneous, and we therefore accept them. The only factual findings the Judicial Commission objects to are the panel's findings that Judge Grady was not under oath when he executed the "affidavits" filed pursuant to sec. 757.025, Stats., and that therefore the forms he filed purporting to be affidavits \*772 were not affidavits. It argues that, as a matter of law, the signing of a printed form stating that the person signing is "duly sworn" and is making a statement "upon oath" renders the signing under oath. Judge Grady and his court reporter, the notary who signed the "affidavits," testified that on no occasion did the notary administer an oath to the judge prior to his signing the forms.

The Judicial Commission acknowledges that whether the affidavit forms were executed under oath is irrelevant to the panel's determination that Judge Grady persistently failed to perform an official duty to file accurate affidavits as to the status of cases pending in his court pursuant to sec. 757.025, Stats. Indeed, the panel concluded that Judge Grady failed to perform that duty, notwithstanding its finding that he was not under oath when he signed those forms. The Judicial Commission originally alleged that Judge Grady's filing of untruthful affidavit forms as to the status of his pending cases constituted "gross personal misconduct," proscribed by our Code of Judicial Ethics, SCR 60.13, and misconduct, defined in sec.

757.81(4)(a), as a "wilful violation of a rule of the code of judicial ethics." However, for reasons not evident in the record, the Judicial Commission subsequently stipulated to the withdrawal of its allegations of "gross personal misconduct," as well as any allegation of a willful violation of the Code of Judicial Ethics. Consequently, the issue whether Judge Grady was, as a matter of law, under oath because he signed "affidavit" forms is not before us.

Having accepted the panel's findings of fact, including the conduct to which Judge Grady had stipulated as constituting a persistent failure to perform official duties, the only issue before us, other than our determination of appropriate discipline, is whether Judge Grady engaged in judicial misconduct by persistently failing to \*773 comply \*\*565 with the two provisions of sec. 757.025, Stats. Judge Grady contends that the statute is unconstitutional. Because he has stipulated that he did not comply with either of the requirements of that statute, if the statute is constitutional, Judge Grady has persistently failed to perform the official duties prescribed therein; if it is unconstitutional, he has not.

The Judicial Commission argues that Judge Grady does not have standing to challenge the constitutionality of sec. 757.025, Stats., because he could have filed truthful and accurate affidavits and, when he did not receive his salary, brought an action to have the statute declared unconstitutional. In support of its contention, the Judicial Commission cites several criminal cases involving perjury, false statements made under oath, and conspiracy to circumvent a statute, in which it was held that the defendants were not entitled to challenge the underlying statutes pursuant to which they testified or made statements under oath or which they conspired to circumvent. Those cases are not apposite here for the reason that Judge Grady is not charged with making false statements under oath, but, rather, with persistently failing to perform an official judicial duty prescribed by sec. 757.025, to make accurate statements by affidavit.

[2][3][4] A person charged with a violation of a statute has a fundamental due process right to challenge the constitutionality of that statute. *See, generally*, 16 Am.Jur.2d, Constitutional Law, secs. 188 *et seq.* "A party has standing to challenge a statute if that statute causes that party injury in fact and the party has a personal stake in the outcome of the action." *Mast v. Olsen*, 89 Wis.2d 12, 16, 278

(Cite as: 118 Wis.2d 762, \*773, 348 N.W.2d 559, \*\*565)

N.W.2d 205 (1979). Judge Grady is charged with judicial misconduct for having persistently failed to perform an official duty to comply with the provisions of \*774 sec. 757.025, Stats., and he has admitted his failure to comply with those provisions. Because Judge Grady may merit discipline for misconduct if the statute constitutionally establishes judicial duties, he has a personal stake in the outcome of this proceeding. Therefore, he has standing. Even if we were to hold that Judge Grady does not have standing to attack the statute's constitutionality, we could raise and decide the constitutional issue *sua sponte*, as the statute is alleged to establish official judicial duties and therefore affects the judicial system of the state. *State v. Holmes*, 106 Wis.2d 31, 40-41, 315 N.W.2d 703 (1981). Consequently, we address the constitutionality of the statute.

Judge Grady contends that sec. 757.025, Stats., is unconstitutional as a diminution of a judge's salary during his term of office. Because we hold the statute unconstitutional on another ground, we do not reach this issue.

We turn now to Judge Grady's argument that sec. 757.025, Stats., by purporting to establish time limits for judicial decision-making, is an unconstitutional exercise by the legislature of judicial power, either as an attempt to regulate the conduct of a judge in his official capacity or as a usurpation of the supreme court's administrative authority over all courts conferred upon it by the Wisconsin Constitution, Article VII, Sections 3(1) and 4(3), as amended April 1977.

On the issue of the statute's constitutionality as applied to Judge Grady, the panel concluded that the judge failed to meet his burden to establish beyond a reasonable doubt by extrinsic evidence that the statute placed an unconstitutional burden on him in the performance of his judicial duties. Apart from Judge Grady's testimony that the statutory time limit for deciding cases was burdensome in exceptional cases and that the statute dictated which cases should be decided first, there is no evidence that the statute establishes unreasonable time limits for judges to decide cases submitted to them or \*775 substantially interferes with the exercise of their judicial duties.

[5] Judge Grady also argues that sec. 757.025, Stats., constitutes an intrusion into the realm of the judiciary created by the doctrine of separation of powers. We recently described that doctrine as follows:

\*\*566 "The Wisconsin constitution creates three separate coordinate branches of government, no branch subordinate to the other, no branch to arrogate to itself control over the other except as is provided by the constitution, and no branch to exercise the power committed by the constitution to another." *State v. Holmes*, 106 Wis.2d 31, 42, 315 N.W.2d 703 (1981).

Judge Grady contends that sec. 757.025, by establishing any time limit for a judge to decide cases and by requiring a judge to verify by affidavit compliance with that requirement in order to receive salary, violates the doctrine of separation of powers.

We have held that the doctrine of separation of powers is not absolute. In *Holmes, supra*, we recognized that each of the three branches of government is not required to exercise its powers in total isolation from the other two branches.

"There are 'great borderlands of powers'--'twilight zone[s]'--'vast stretches of ambiguous territory'--in which it is difficult to determine where the functions of one branch end and those of another begin. The doctrine of separation of powers does not demand a strict, complete, absolute, scientific division of functions between the three branches of government. The separation of powers doctrine states the principle of shared, rather than completely separated powers. The doctrine envisions a government of separated branches sharing certain powers." *Id.*, 43, 315 N.W.2d 703.

In these areas of "shared power," one branch of government may exercise power conferred on another only to an extent that does not unduly burden or substantially interfere with the other branch's exercise of its power.

\*776 "Although the legislature is not prohibited by the doctrine of separation of powers from enacting reasonable laws regulating substitution of judges to assure a fair trial and the appearance of a fair trial, the doctrine of separation of powers does impose significant limitations on the legislature's exercise of its power. Under the doctrine of separation of powers, the legislature is prohibited from unduly burdening or substantially interfering with the judicial branch." *Holmes, supra*, 68, 315 N.W.2d 703.

[6] However, the separation of powers doctrine does not render *every* power conferred upon one branch of government a power which may be shared by another

branch and as to which the undue burden or substantial interference standard is applicable. There are zones of authority constitutionally established for each branch of government upon which any other branch of government is prohibited from intruding. As to these areas of authority, the unreasonable burden or substantial interference test does not apply; any exercise of authority by another branch of government is unconstitutional. *Thoe v. Chicago M. & St. P.R. Co.*, 181 Wis. 456, 465, 195 N.W. 407 (1923).

[7] The panel concluded that sec. 757.025, Stats., does not, on its face, unreasonably burden or substantially interfere with the judicial branch of government nor unreasonably interfere with the Supreme Court's superintending and administrative authority over all courts, but it did not address the issue whether the statute represents an intrusion by the legislature into an area of exclusive judicial authority. This, then, is the issue we must decide.

Section 757.025, Stats., was originally enacted by c. 405, Laws of 1959, to require judges of a court of record, as a condition of receiving their salary, to file an affidavit stating that no cause or matter submitted to them in final form for decision remained undecided for \*777 one year or more. That period was subsequently reduced to 90 days, and a 90-day extension was provided, c. 253, Laws of 1969. We note that the legislature enacted a statute in 1909 substantially similar to present sec. 757.025. [FN5] \*\*567 However, unlike the present statute, the 1909 provision concerned only county judges, who were county employees, and the courts affected were not constitutional courts but courts created by the legislature pursuant to express constitutional authority. [FN6]

FN5. Sec. 694(7), 1909 Stats., provided: "No county judge shall receive or be allowed to draw any salary, unless he shall first take and subscribe an oath before an officer entitled to administer oaths, that no cause or matter in his court remains undecided that has been submitted for decision for the period of ninety days, exclusive of the time that he shall have been actually disabled by sickness, which affidavit shall be presented to and filed with the county clerk of such county."

It was subsequently renumbered sec. 59.80(2), Stats., c. 695, Laws of 1919, and repealed in 1945, c. 344, Laws of 1945.

FN6. In 1909, Art. VII, sec. 2, Wis. Const.,

provided, in pertinent part: "The judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, circuit courts, courts of probate, and in justices of the peace. The legislature may also vest such jurisdiction as shall be deemed necessary in municipal courts, and shall have power to establish inferior courts in the several counties, with limited civil and criminal jurisdiction...."

By virtue of the 1978 court reorganization, county courts were abolished, c. 449, Laws of 1977, and were replaced by circuit courts. Consequently, the courts now composing the unified court system in which the constitution reposes the judicial power of the state are all constitutional, not legislatively created, courts. Whatever administrative regulations the legislature imposed on courts of its own creation may not be constitutional when applied to constitutional courts.

The Judicial Commission contends that the establishment of time limits within which judges are to decide cases does not intrude upon a power exclusively committed to the judiciary for the reason that the legislature, \*778 having a duty to promote the public interest, may enact laws to assure a fair trial and may effectuate the public policy of maintaining a fair judicial system and public confidence in that system. It argues that excessive delay in the deciding of cases directly impairs public confidence in the judicial system. This begs the question. The ultimate question to be decided is to which branch of government has the constitution reposed the power that is at issue here.

Judge Grady's arguments supporting his contention that the setting of time limits for judicial decision-making falls within an area of power conferred exclusively on the judicial branch of government are persuasive. For more than a century, this court has been called upon to resist attempts by other branches of government to exercise authority in an exclusively judicial area. These have included an attempt to remove and replace a court employe, *In re Janitor*, 35 Wis. 410 (1874); an attempt to dictate the physical facilities in which a court was to exercise its judicial functions, *In re Court Room*, 148 Wis. 109, 134 N.W. 330 (1912); an attempt to legislate what constitutes the legal sufficiency of evidence, *Thoe v. Chicago M. & St. P.R. Co.*, 181 Wis. 456, 195 N.W. 407 (1923); An attempt to regulate trials in the conduct of court business, *Rules of Court Case*, 204 Wis. 501, 236 N.W. 717 (1931); bar admission and regulation of attorneys, *In re Cannon*, 206 Wis. 374,

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240 N.W. 441 (1932), *Integration of Bar Cases*, 244 Wis. 8, 11 N.W.2d 604 (1943), 249 Wis. 523, 25 N.W.2d 500 (1946), 273 Wis. 281, 77 N.W.2d 602 (1956). In each of these cases we recognized areas of authority exclusive to the judicial branch and, therefore, free from intrusion by another branch of government.

Judge Grady cites several cases from foreign jurisdictions in which legislative attempts to exercise judicial power were held unconstitutional. In *State ex rel. Watson v. Meriardo*, 70 Nev. 322, 268 P.2d 922 (1954), the Supreme Court of Nevada held unconstitutional a statute, similar to the one at issue here, requiring each district court \*779 judge, before receiving a monthly salary, to file an affidavit with the state controller stating that no matters remain undecided for a period of more than 90 days. The court held that legislation attempting to require judicial action within a specified period of time is an unconstitutional \*\*568 interference with the judicial function. [FN7]

FN7. Art. III, sec. 1 of the Nevada Constitution, provided:

"The powers of government ... shall be divided into three separate departments--the legislative, the executive, and the judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted."

In *Coate v. Omholt*, 662 P.2d 591 (Mont.1983), the statutes at issue required opinions to be reached or decisions written within 90 days of submission, unless the judge filed an affidavit with the chief justice to obtain an automatic 30-day extension. In addition, before the expiration of the 120th day of submission, the judge could file an affidavit to establish good cause for the delay, which would be determined by the Supreme Court. Violation of the statute carried with it a forfeiture of one month's judicial salary of the judge. The court held:

"... time limits within which judicial decisions must be reached, fall within what we recognized as the '... third realm of judicial activity, neither substantive nor adjective [procedural] law, a realm of "proceedings which are so vital to the effective functioning of the courts as to go beyond legislative power.'" [Citation omitted.]" *Id.*, 600. [FN8]

FN8. The Montana constitution contained a separation of powers provision similar to the Nevada

constitutional provision cited in footnote 7, *supra*.

The Judicial Commission claims that these cases are based on a constitutionally mandated separation of powers doctrine and are, therefore, distinguishable from our holding in *State v. Holmes*, *supra*, that the legislature may enact legislation affecting the courts so long as \*780 there is no "unreasonable" interference with judicial functions. This claim fails because it ignores the existence of some areas of judicial power which are exclusive to the judicial branch of government. Similarly, we are not convinced by the Judicial Commission's argument that most of the cases cited by Judge Grady can be distinguished on the ground that the statutes in question established unreasonable time periods or the imposition of penalties upon litigants because of judicial delay. We are not concerned with the reasonableness or substantiality of legislative interference; the sole question is whether the statute at issue is a legislative regulation of an area reserved exclusively to the judiciary.

The Judicial Commission cites *United States v. Brainer*, 691 F.2d 691 (4th Cir.1982), upholding the provisions of the federal Speedy Trial Act, 18 U.S.C. secs. 3161 *et seq.*, in support of its contention that the Wisconsin doctrine of separation of powers is the equivalent of a doctrine of "shared powers" according to which one branch of government may exercise its authority in an area constitutionally established in another branch so long as its actions do not unreasonably burden or substantially interfere with the exercise by that other branch of its authority within the area. It quotes the following passage from that case:

"In determining whether the Speedy Trial Act disrupts the constitutional balance between Congress and the courts, 'the proper inquiry focuses on the extent to which [the Act] prevents the [judiciary] from accomplishing its constitutionally assigned functions.' [Citation omitted.] A considerable degree of congressional intervention in judicial administration is constitutionally permissible if such intervention is 'justified by an overriding need to promote objectives within the constitutional authority of Congress.' [Citation omitted.]

"...

"Once it is established that trial rights are a proper subject of legislation, the question becomes whether the \*781 particular provisions of the Speedy Trial Act intrude upon the zone of judicial self-administration to such a degree as to 'prevent[ ] the

[judiciary] from accomplishing its constitutionally assigned functions.' We do not think that the Act's impact upon the courts can fairly be described in such extreme terms...." *Id.*, 697-98.

\*\*569 This serves to support the exclusivity argument more than the shared powers argument. It establishes the constitutional propriety of legislative intervention in judicial administration only when such intervention is justified "by an overriding need to promote objectives within the constitutional authority" of the legislature.

The court in *Brainer* acknowledged that not all governmental power is "shared power." It said: "For present purposes, we assume without deciding that federal courts possess some measure of administrative independence such that congressional intervention would, at some extreme point, 'pass[ ] the limit which separates the legislative from the judicial power.'" [Citation omitted.] It does not follow, however, that the Speedy Trial Act represents such an extreme. [Citation omitted.]" *Id.*, 697.

The court found that trial rights were a proper subject of legislation, thus requiring the application of an undue burden/substantial interference type of test. [FN9]

FN9. The Speedy Trial Act requires, *inter alia*, that a defendant be tried within 70 days from the later of the date on which the indictment is made public or the date of the defendant's first appearance before a judicial officer of the court in which the charge is pending. The sanction for noncompliance with the act is mandatory dismissal of the action. In finding that the Speedy Trial Act did not so intrude upon judicial administration as to prevent the judiciary from accomplishing its constitutionally assigned functions, the court noted three exceptions to the time limits established: the Act excludes certain unavoidable delays from computation in the determination of the trial deadlines; it excludes from the statutory periods delay resulting from a continuance granted by the trial court upon a finding that "the ends of justice served by [the continuance] outweigh the best interest of the public and the defendant in a speedy trial"; it permits the judicial council of a circuit to suspend the time limits imposed by the Act when the district court cannot meet the time constraints by the efficient use of existing resources "due to the status of its court calendars." 18 U.S.C. secs. 3161(h),

3161(h)(8)(A), 3174. The court also noted that the Act's mandatory dismissal sanction for untimeliness is qualified: the court may dismiss the action without prejudice, subject to specified criteria. 18 U.S.C. sec. 3162(a)(2). The Wisconsin statute before us establishes a time period not for the trial of an action but only for the judge's decision, and it provides no exception.

\*782 Unlike trial rights, the setting of time limits for judicial decision-making concerns the efficient and effective functioning of the court system and, therefore, is a matter of court administration. As such it comes within the administrative authority over all state courts which the Wisconsin Constitution vests in the supreme court, Art. VII, sec. 3(1), as amended in 1977. The legislature does not have the power to promulgate rules of court administration.

However, the statute requiring the withholding a judge's salary for failure to decide cases within a specified time goes beyond court administration. It constitutes an attempt by the legislature to coerce judges in their exercise of the essential case-deciding function of the judiciary. In so doing, the legislature violates the well-established policy that the judicial branch of government must be independent in the fulfillment of its constitutional responsibilities. That policy, a part of American jurisprudence since the founding of our republic and first acknowledged in the English Act of Settlement in 1701, requires that a truly independent judiciary must be free from control by the other branches of government. [FN10]

FN10. See, *United States v. Will*, 449 U.S. 200, 217-19, 101 S.Ct. 471, 481-82, 66 L.Ed.2d 392 (1980), in which the U.S. Supreme Court traces the origins of the Compensation Clause of the U.S. Constitution, Art. III, sec. 1, prohibiting the diminution of a judge's compensation during a term in office.

\*783 The setting and enforcement of time periods for judges to decide cases lies within an area of authority exclusively reposed in the judicial branch of government. Section 757.025, Stats., is an intrusion by the legislature into the exclusively judicial area of judicial decision-making and, as such, is unconstitutional. Consequently, Judge Grady's failure to comply with that statute, *i.e.*, his failure to decide cases within the statutory time limits, his failure to certify his inability to do so in the record of applicable \*\*570 cases, and his failure to file accurate affidavits, does not constitute a persistent failure to

perform official duties.

[8] We do not question the legislature's wisdom in promoting the prompt disposition of judicial business, nor do the time periods for decision-making it has established seem unreasonable. However, a reasonable time period for judicial decision-making can be established only by the supreme court as a rule of judicial administration adopted pursuant to its administrative authority over all courts conferred by Art. VII, sec. 3(1) of the Wisconsin Constitution. Not only does the constitution grant administrative authority of the court system to the supreme court, but it also establishes a duty of the supreme court to exercise that administrative authority to promote the efficient and effective operation of the state's court system. A rule setting time limits for judicial decisions is desirable because it will accomplish that end.

Such a rule should require trial judges to report the status of cases pending beyond the established time period, but such reports should be for the purpose of alerting the judicial administrative offices, e.g., the chief justice of the supreme court, as the administrative head \*784 of the judicial system, the director of state courts and the chief judge of the appropriate judicial administrative district, of a need for additional judicial personnel or other steps to ensure the prompt disposition of judicial business in those courts. Therefore, in the exercise of our constitutional authority, Art. VII, sec. 3(1), Wis. Const., we hereby adopt, effective the date of this order, [FN11] the rule appended to this opinion establishing a time within which a judge shall be expected to decide a matter after submission in final form and requiring a judge to report to the judicial administrative authorities on a regular basis the status of cases pending beyond that time period. [FN12]

FN11. There is insufficient time to send copies of this rule to the chief of the Legislative Reference Bureau and the Revisor of Statutes for review and suggestions as to drafting style and numbering prior to our adoption of it. That procedure, set forth in SCR 98.03, will be followed upon the filing of this opinion, and any necessary modifications of the rule will be made thereafter.

FN12. We heretofore adopted a rule authorizing the director of state courts to require each judge to verify and certify vouchers for the judge, the reporter and assistant reporters, SCR 70.01(4), but this rule has not been used, nor was it intended to be used, to monitor

the caseloads or the dispositional promptness of the state's trial judges. Rather, it is a successor to a statutory provision which required judges to notify the state's payroll authorities that salary was payable to judicial personnel, including the judges. See, sec. 20.66, 1949 Stats., sec. 20.260, 1955 Stats., sec. 256.54(8), 1961 Stats.

[9] Having held sec. 757.025, Stats., unconstitutional, we reject the panel's conclusion that Judge Grady persistently failed to perform a judicial duty to decide cases within the time period set forth therein and to file affidavits pursuant to it. There remains the conduct to which Judge Grady had stipulated: his failure, in violation of the Code of Judicial Ethics, SCR 60.01(4), to be prompt in the performance of his duties and to organize his court and supervise court personnel so that the business \*785 of the court could be dispatched with promptness and convenience. This we determine as a matter of law constitutes judicial misconduct.

Further, another aspect of Judge Grady's conduct merits our reproof: his filing of affidavit-type forms repeatedly misrepresenting the status of cases pending in his court during the four-year period 1979-82. Regardless of whether Judge Grady was under oath when he signed those forms and whether the statute under which those forms were filed is constitutional, Judge Grady regularly and knowingly misrepresented the status of his caseload. As noted above, the Judicial Commission initially alleged that his doing so constituted gross personal misconduct, but it later withdrew that allegation. Nevertheless, the conduct is undisputed. We conclude that Judge Grady's filing of affidavit forms knowing they misrepresented the status of his pending cases constitutes conduct prejudicial to \*\*571 the administration of justice and brings the judicial office into disrepute.

On the basis of the totality of Judge Grady's misconduct, and in light of the mitigating circumstances, we agree with the panel's recommendation that a reprimand is appropriate discipline. Although we make this determination in a case of first impression, we are aware of discipline imposed in similar cases in other jurisdictions. [FN13]

FN13. *In the Matter of Carstensen*, 316 N.W.2d 889 (Iowa 1982), *In re Weeks*, 134 Ariz. 521, 658 P.2d 174 (Ariz. 1983), and *In re Jensen*, 24 Cal.3d 72, 154 Cal.Rptr. 503, 593 P.2d 200 (Cal. 1978).

Upon our review of the findings of fact and conclusions of law of the judicial conduct panel in this judicial disciplinary proceeding, we order, as discipline for his persistent failure to perform official duties to promptly dispose of cases submitted to him for decision and to \*786 organize his court for the prompt disposition of judicial business, that the Honorable Warren A. Grady, circuit judge for Ozaukee county, be and hereby is reprimanded.

#### APPENDIX

IT IS ORDERED that the following rule of judicial administration is adopted, effective the date this opinion is filed and until further order of the court.

#### SCR 70.36 Judges' Certification of Status of Pending Cases.

(1)(a) Every judge of a circuit court shall decide each matter submitted for decision within 90 days of the date on which the matter is submitted to the judge in final form, exclusive of the time the judge has been actually disabled by sickness. If a judge is unable to do so, within five days of the expiration of the 90-day period the judge shall so certify in the record of the matter and notify in writing the chief judge of the judicial administrative district in which the matter is pending, and the period is thereupon extended for one additional period of 90 days.

(b) The chief judge shall send a copy of a notification made under par. (a) to the office of the director of state courts. The director of state courts, pursuant to SCR 70.10, and the chief judge, pursuant to SCR 70.19(3)(a), shall assign judges as needed or take other steps to assist a judge who has made notification under par. (a) in the timely disposition of judicial business.

(c) In the exercise of its superintending and administrative authority over all courts and upon written request from a chief judge, the supreme court may extend the period specified in par. (a) for decision in specific matters as exigent circumstances may require.

\*787 (2)(a) Within the first ten days of each month every judge of a circuit court shall execute and file with the office of the director of state courts:

(i) an affidavit stating that there are no matters awaiting decision beyond the 90-day or, if extended

by certification and notification, the 180-day period specified in sub. (1)(a), or

(ii) if there are matters so pending, an affidavit setting forth the name and docket number of each of those cases, the court in which it is pending, and the date on which it was submitted to the judge in final form.

(b) The office of the director of state courts shall send a copy of affidavits listing pending matters to the chief judge of the judicial administrative district(s) in which those matters are pending and shall notify the chief judge of a judicial administrative district of the failure of a judge within the district to file an affidavit pursuant to this subsection.

(3) Failure of a judge to comply with the requirements of sub. (1)(a) or sub. (2)(a) may result in one or more of the following remedial measures:

(a) Change of the judge's assignment, pursuant to SCR 70.19(3)(a).

(b) Referral of the matter by the director of state courts to the supreme court for the initiation of contempt proceedings,

(c) Referral of the matter by the director of state courts to the judicial commission for investigation of possible misconduct.

**\*\*572 Comment:** In addition to possibly constituting judicial misconduct under sec. 757.81(4), Stats., a judge's failure to comply with this rule may constitute contempt of the supreme court and result in the court's imposing a fine for noncompliance. See, *In re Hon. Charles E. Kading*, 74 Wis.2d 405, 246 N.W.2d 903 (1976).

**\*788 ABRAHAMSON, Justice (concurring).**

I agree that Judge Grady should be disciplined.

I also agree with the majority that inasmuch as it declares sec. 757.025, Stats. 1981-82, unconstitutional, it ought to adopt a rule encompassing the broad public policy decision reflected in sec. 757.025. [FNI] Although I would have preferred to submit the formulation of a rule to the Judicial Council, where public, open deliberations by representatives of the public, the bar, the legislature, and the trial and appellate bench may be held, I am

satisfied that a public hearing in November after six months' experience with the rule may be a reasonable alternative under these circumstances. I therefore join the majority in promulgating the rule appended to the majority opinion.

FN1. The rule, like sec. 757.025, requires a judge to file an affidavit and keeps the same 90 and 180 day periods. There is no withholding of salary. It is not clear that the court, unlike the legislature, has the power to withhold pay. The chief judge and the director of state courts are to assist a judge who reports delay in deciding cases. Although the "sanctions," namely, the chief judge and the director of state courts are to assist the "overloaded judge," the judge may be held in contempt by this court, or the director of courts may file a complaint of judicial misconduct with the Judicial Commission, preexisted the promulgation of the rule, it is perhaps useful to spell out these matters clearly in this rule.

I write separately because I disagree with the majority's conclusion that sec. 757.025, Stats. 1981-82, is unconstitutional as a violation of the doctrine of separation of powers. [FN2] I cannot join the majority because it has significantly altered the historical reading of the separation of powers doctrine in this state.

FN2. The court has frequently said that a statute is presumed constitutional and that its invalidity must be established beyond a reasonable doubt. This canon is based on the separation of powers doctrine and a presumption of the good intentions and wisdom of executive and legislative officials who have also sworn to uphold the constitutions. I am not persuaded by the briefs, the majority opinion, or my own research that sec. 757.025 is unconstitutional.

\*789 While the majority concludes that a regulation like sec. 757.025, which is designed to promote the orderly and expeditious disposition of matters submitted to a judge, "lies within an area of authority exclusively reposed in the judicial branch of government" (emphasis added), *supra*, p. 569. I conclude that the regulation lies within the zone of authority shared by the legislature and the judiciary. [FN3] Although I believe that this court is better qualified than the legislature to deal with problems of delay in \*\*573 circuit court decision-making, this court need not claim exclusive authority to take full advantage of its superior expertise and flexibility in working toward solutions to problems of delays.

[FN3a](See p. 572 for fn. 3a.)

FN3. The majority interprets sec. 757.025 as setting "time periods for judges to decide cases." *supra*, pp. 569, 570. For purposes of this concurring opinion I accept this characterization of sec. 757.025. I conclude that even as so interpreted sec. 757.025 is constitutional. Sec. 757.025 can be interpreted in other ways. A statute will be construed to preserve it from unconstitutionality. *In re City of Beloit*, 37 Wis.2d 637, 643, 155 N.W.2d 633 (1968). Sec. 757.025 may be viewed as having two parts: The first requires the circuit judge to advise the public, via the affidavit, of the status of undecided cases. The second requires withholding of pay. The affidavit requirement is certainly constitutional under the majority's reasoning. If the majority views the pay-withholding provision as coercive and unconstitutional, the majority should read sec. 757.025 as permitting this court to extend the 180-day period and allow for continued payment of compensation upon the petition of a circuit court judge showing good cause. Such an interpretation comports with this court's obligation "to uphold the constitutionality of a statute whenever possible" and the court's practice of rectifying "statutory deficiencies by court rule in order to save a statute." *State ex rel. Deisinger v. Treffert*, 85 Wis.2d 257, 268, 270 N.W.2d 402 (1978).

Although I conclude that sec. 757.025 is constitutional, I further conclude that the court may adopt a rule that if good cause is shown the court may grant an extension beyond the statutory 180 day period. Such a rule would, in my view, be wise, would be within the court's power, and would be an example of the way the legislative and judicial branches of government act together to improve the administration of justice.

\*790 While this court should invoke the separation of powers doctrine when necessary to maintain the integrity and independence of the courts, it should hesitate to remove a matter from an area of authority shared by the legislature and the judiciary to an area exclusively reposed in the judicial branch of government. An expansive concept of exclusive judicial authority supplants the legislature's primary constitutional power to balance competing social policies and creates the danger of unchecked power in the judiciary. [FN4] Concurrent governmental powers afford the people greater protection: when the people perceive a need to which one branch has not been responsive, they can turn to the other branch for