

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10597 SENATE • JUDICIARY

1 * Sec. 28. AS 46.03.030(b) is amended to read:

2 (b) The department may grant to a municipality or to a water or sewer
3 company, as funds are available, a grant for any of the following:

- 4 (1) a water quality enhancement project;
- 5 (2) a public water supply, treatment, or distribution system;
- 6 (3) a wastewater collection, treatment, or discharge system;
- 7 (4) a solid waste processing, disposal, or resource recovery system.

8 * Sec. 29. AS 46.03.030(e) is amended to read:

9 (e) A grant under this section to a municipality or to a water or sewer
10 company for a project funded by an appropriation made by the legislature

11 (1) before July 1, 1994, may not exceed 50 percent of the eligible costs
12 of the project;

13 (2) after July 1, 1994, may not exceed

14 (A) 85 percent of the eligible costs for a municipality with a
15 population of 1,000 persons or less or a water or sewer company with 1,000
16 or fewer customers;

17 (B) 70 percent of the eligible costs for a municipality with a
18 population of 1,001 to 5,000 persons or a water or sewer company with
19 1,001 to 5,000 customers; and

20 (C) 50 percent of the eligible costs for a municipality with a
21 population greater than 5,000 persons or a water or sewer company with
22 more than 5,000 customers; however, if a municipality with a population
23 greater than 5,000 persons or a water or sewer company with more than
24 5,000 customers seeks a grant for a project that relates to a solid waste
25 processing or disposal system that incorporates resource recovery, the
26 department may provide a grant for up to 60 percent of the eligible costs of the
27 project.

28 * Sec. 30. AS 42.04.100 is repealed.

29 * Sec. 31. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 APPLICATION OF TIMELINES TO NEW AND EXISTING DOCKETS. The

1 timelines provided in AS 42.05.175, added by sec. 13 of this Act, apply to all new dockets of
2 the Regulatory Commission of Alaska filed on or after July 1, 2002. For dockets commenced
3 before July 1, 2002, the date of July 1, 2002, shall be used as the date of filing for the purpose
4 of applying the timelines in AS 42.05.175.

5 * Sec. 32. The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 TASK FORCE INQUIRY INTO REGULATORY COMMISSION OF ALASKA. (a)
8 A task force is established to inquire into all aspects of the operation of the Regulatory
9 Commission of Alaska. The members of the task force shall be appointed as follows: three
10 people by the president of the senate, three people by the speaker of the house of
11 representatives, and one person by the governor.

12 (b) The task force shall immediately perform a comprehensive review of the
13 commission and its operations. The task force shall present a written report to the legislature
14 not later than January 30, 2003. The task force is terminated upon the presentation of the
15 written report to the legislature.

16 (c) The task force shall have access to all information, including confidential
17 information, in the custody of the commission. The task force shall maintain the
18 confidentiality of any confidential information accessed. Confidential information may not be
19 disclosed in the written report prepared under (b) of this section.

20 * Sec. 33. Sections 1 - 7, 12, 15 - 20, 22 - 27, and 30 of this Act take effect January 1, 2003.

21 * Sec. 34. Except as provided in sec. 33 of this Act, this Act takes effect immediately under
22 AS 01.10.070(c).

moved out
6/26

adopted 6/26
amend 1 adopted
Amend 2 p 18 ins 13-14 6/26/02
Am 3 delete sect 28, 29, 30
Am 4 remove all ref. to Telecom. Comm
Am 5 p 18 add (3) - elec. comm.
Am 6 p 6 ln 27-28 good cause & reports quarterly
Am 7 task force maj. vote to get confid. into subject to Exec Ethics Act

SENATE CS FOR CS FOR HOUSE BILL NO. 3001(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - THIRD SPECIAL SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the powers and duties of the Regulatory Commission of Alaska,
2 establishing a task force to inquire into the operation of the commission, extending the
3 termination date of the commission to June 30, 2003, establishing the
4 Telecommunications Commission of Alaska, making conforming amendments, and
5 permitting grants to certain regulated public utilities for water quality projects; and
6 providing for an effective date."

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

8 * Section 1. AS 29.35.060(a) is amended to read:

9 (a) The assembly acting for the area outside all cities in the borough and the
10 council acting for the area in a city may grant franchises, including exclusive franchise
11 privileges, to a person, corporation, organization, or utility not certificated by the
12 former Alaska Public Utilities Commission, [OR BY] the Regulatory Commission of
13 Alaska, or the Telecommunications Commission of Alaska and may permit the use

1 of streets and other public places by the franchise holder under regulations prescribed
2 by ordinance.

3 * **Sec. 2.** AS 29.35.060(b) is amended to read:

4 (b) Unless the grant is made on a competitive basis, the grant of an exclusive
5 right to use a public street or right-of-way for more than five years to a utility or a
6 transportation system not certificated by the former Alaska Public Utilities
7 Commission, [OR BY] the Regulatory Commission of Alaska, or the
8 Telecommunications Commission of Alaska shall be valid only if approved by a
9 majority of the voters at an election.

10 * **Sec. 3.** AS 29.35.131(c) is amended to read:

11 (c) A local exchange telephone company or wireless telephone company shall
12 include the appropriate enhanced 911 surcharge, stated separately and included in the
13 total amount owed, in the bills delivered to its customers. The Telecommunications
14 [REGULATORY] Commission of Alaska may not consider the enhanced 911
15 surcharge as revenue of the telephone company and has no jurisdiction over an
16 enhanced 911 system. A customer is liable for payment of the enhanced 911
17 surcharge in the amounts billed by the telephone company until the amounts have been
18 paid to the telephone company.

19 * **Sec. 4.** AS 29.35.137(5) is amended to read:

20 (5) "local exchange service" means the transmission of two-way
21 interactive switched voice communications furnished by a local exchange telephone
22 company within a local exchange area, including access to enhanced 911 systems; in
23 this paragraph, "local exchange area" means a geographic area encompassing one or
24 more political subdivisions as described in maps, tariffs, or rate schedules filed with
25 the Telecommunications [REGULATORY] Commission of Alaska, where local
26 exchange rates apply;

27 * **Sec. 5.** AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

28 (AAA) Telecommunications Commission of Alaska under
29 AS 42.05 and AS 42.08;

30 * **Sec. 6.** AS 39.25.120(c)(19) is amended to read:

31 (19) hearing officers and administrative law judges of the Regulatory

1 Commission of Alaska and the Telecommunications Commission of Alaska.

2 * Sec. 7. AS 39.50.200(b) is amended by adding a new paragraph to read:

3 (57) Telecommunications Commission of Alaska (AS 42.08.010).

4 * Sec. 8. AS 42.04.010(b) is amended to read:

5 (b) The commission shall annually elect [WHEN A VACANCY OCCURS
6 IN THE OFFICE OF CHAIR, THE COMMISSION MAY NOMINATE] one of its
7 members to serve as chair for the following fiscal year. When a vacancy occurs in
8 the office of chair, the commission shall elect one of its members to serve the
9 remaining term as chair [GOVERNOR SHALL DESIGNATE THE CHAIR OF
10 THE COMMISSION, EITHER BY SELECTING THE MEMBER NOMINATED BY
11 THE COMMISSION OR ANOTHER MEMBER]. The term as chair is one year
12 [FOUR YEARS]. The chair may [NOT] be elected [APPOINTED] to not more than
13 three successive terms as chair. After a year of not serving as chair, the
14 commissioner is eligible for election as chair again.

15 * Sec. 9. AS 42.04.080 is amended by adding new subsections to read:

16 (c) A member of a hearing panel appointed under (a) of this section may not
17 have or have had an ex parte communication on a substantive matter that is pending or
18 likely to come before the panel with a party to the proceeding.

19 (d) The chair may not appoint the members of a hearing panel if the chair has
20 had an ex parte communication on the matter before the panel, and the chair shall
21 delegate the appointment power to the next most senior commissioner who has not had
22 an ex parte communication in that matter.

23 (e) For purposes of (c) and (d) of this section, an ex parte communication is a
24 direct or indirect communication on a substantive matter that is pending or likely to
25 come before the commission between a commissioner and a party without the
26 opportunity for all other parties to be present. However, a communication occurring
27 more than two years before the filing of the matter with the commission does not
28 disqualify a person under (c) or (d) of this section. Circumstances that might
29 reasonably suggest to a third party that an ex parte contact had occurred, even if none
30 was made, shall be considered an ex parte contact for purposes of (c) and (d) of this
31 section.

1 * **Sec. 10.** AS 42.04 is amended by adding a new section to article 1 to read:

2 **Sec. 42.04.090. Impartial decision-making.** (a) A hearing panel and each
3 member of the hearing panel shall accord to a person the right to be heard according to
4 law. A member of a hearing panel may not initiate, permit, or consider an ex parte
5 communication or other communication made to the member of a hearing panel
* 6 outside the presence of the parties concerning a matter that is pending or likely to
7 come before the panel except as allowed by this section. Members of a hearing panel
8 shall make reasonable efforts to see that law clerks and other commission staff
9 carrying out similar functions under the hearing panel's supervision do not violate the
10 provisions of this section.

11 (b) A hearing panel and each member of the hearing panel may initiate or
12 consider an ex parte communication when expressly authorized by law to do so.

13 (c) When circumstances require, a hearing panel and each member of the
14 hearing panel may engage in ex parte communications for scheduling or other
15 administrative purposes if (1) the communications do not deal with substantive matters
16 or the merits of the issues litigated; (2) each member of the hearing panel reasonably
17 believes no party will gain a procedural or tactical advantage because the
18 communication is ex parte; and (3) the hearing panel takes reasonable steps to notify
19 all parties promptly of the substance of the ex parte communication and, when
20 practicable, allows them an opportunity to respond. This subsection does not apply to
21 ex parte communications by commission staff concerning scheduling or administrative
22 matters.

23 (d) If the parties agree to this procedure beforehand, either in writing or on the
24 record, a hearing panel and each member of the hearing panel may engage in ex parte
25 communications on specified administrative topics with one or more parties.

26 (e) A hearing panel and each member of the hearing panel may consult other
27 members of the panel and commission staff whose function is to aid the hearing panel
28 in carrying out its adjudicative responsibilities.

29 (f) A hearing panel and each member of the hearing panel may, with the
30 consent of the parties, confer separately with the parties and their lawyers in an effort
31 to mediate or settle matters pending before the hearing panel.

1 * **Sec. 11.** AS 42.05.141(a) is amended to read:

2 (a) The commission [REGULATORY COMMISSION OF ALASKA] may
3 do all things necessary or proper to carry out the purposes and exercise the powers
4 expressly granted or reasonably implied in this chapter, including

5 (1) regulate every public utility engaged or proposing to engage in a
6 utility business inside the state, except to the extent exempted by AS 42.05.711;

7 (2) investigate, upon complaint or upon its own motion, the rates,
8 classifications, rules, regulations, practices, services, and facilities of a public utility
9 and hold hearings on them;

10 (3) make or require just, fair, and reasonable rates, classifications,
11 regulations, practices, services, and facilities for a public utility;

12 (4) prescribe the system of accounts and regulate the service and safety
13 of operations of a public utility;

14 (5) require a public utility to file reports and other information and
15 data;

16 (6) appear personally or by counsel and represent the interests and
17 welfare of the state in all matters and proceedings involving a public utility pending
18 before an officer, department, board, commission, or court of the state or of another
19 state or the United States and to intervene in, protest, resist, or advocate the granting,
20 denial, or modification of any petition, application, complaint, or other proceeding;

21 (7) examine witnesses and offer evidence in any proceeding affecting
22 the state and initiate or participate in judicial proceedings to the extent necessary to
23 protect and promote the interests of the state.

24 * **Sec. 12.** AS 42.05 is amended by adding a new section to read:

25 **Sec. 42.05.144. Telecommunications exempted from jurisdiction.** The
26 Regulatory Commission of Alaska may not regulate, adjudicate, or otherwise exercise
27 any of its powers over telecommunications services in the state. Telecommunications
28 services utilities shall be under the sole jurisdiction of the Telecommunications
29 Commission of Alaska. All references in AS 42.04 and this chapter to
30 telecommunications services shall be interpreted as being subject to the jurisdiction of
31 the Telecommunications Commission of Alaska.

1 * Sec. 13. AS 42.05 is amended by adding a new section to read:

2 Sec. 42.05.175. Timelines for issuance of final orders. (a) The commission
3 shall issue a final order not later than six months after a complete application is filed
4 for an application

- 5 (1) for a certificate of public convenience and necessity;
- 6 (2) to amend a certificate of public convenience and necessity;
- 7 (3) to transfer a certificate of public convenience and necessity; and
- 8 (4) to acquire a controlling interest in a certificated public utility.

9 (b) Notwithstanding a suspension ordered under AS 42.05.421, the
10 commission shall issue a final order not later than nine months after a complete tariff
11 filing is made for a tariff filing that does not change the utility's revenue requirement
12 or rate design.

13 (c) Notwithstanding a suspension ordered under AS 42.05.421, the
14 commission shall issue a final order not later than 15 months after a complete tariff
15 filing is made for a tariff filing that changes the utility's revenue requirement or rate
16 design.

17 (d) The commission shall issue a final order not later than 12 months after a
18 complete formal complaint is filed against a utility or, when the commission initiates a
19 formal investigation of a utility without the filing of a complete formal complaint, not
20 later than 12 months after the order initiating the formal investigation is issued.

21 (e) The commission shall issue a final order in a rule making proceeding not
22 later than 24 months after a complete petition for adoption, amendment, or repeal of a
23 regulation under AS 44.62.180 - 44.62.290 is filed or, when the commission initiates a
24 rule making docket, not later than 24 months after the order initiating the proceeding is
25 issued.

26 (f) The commission may extend a timeline required under (a) - (e) of this
27 section if all parties of record consent to the extension.

same prov as H. 2149 good cause may only be extended once for 90 days

28 (g) If the commission does not issue and serve a final order regarding an
29 application or suspended tariff under section (a), (b), or (c) of this section within the
30 applicable timeline specified, and if the commission does not extend the timeline in
31 accordance with (f) of this section, the application or suspended tariff filing shall be

1 considered approved and shall go into effect immediately.

2 (h) For purposes of this section, "final order" means a dispositive
3 administrative order that resolves all matters at issue and that may be the basis for a
4 petition for reconsideration or request for judicial review.

5 (i) For purposes of this section, an application, tariff filing, formal complaint,
6 or petition is complete if it complies with the filing, format, and content requirements
7 established by statute, regulation, and forms adopted by the commission under
8 regulation.

9 * Sec. 14. AS 42.05.191 is amended to read:

10 **Sec. 42.05.191. Contents and service of orders.** Every formal order of the
11 commission shall be based upon the facts of record. However, the commission may,
12 without a hearing, issue an order approving any settlement supported by all the
13 parties of record in a proceeding, including a compromise settlement. Every order
14 entered pursuant to a hearing must state the commission's findings, the basis of its
15 findings and conclusions, together with its decision. These orders shall be entered of
16 record and a copy of them shall be served on all parties of record in the proceeding.

17 * Sec. 15. AS 42.05.325(c)(2) is amended to read:

18 (2) does not include an intrastate or interstate long-distance carrier that
19 contracts for operator services and charges rates for those services that are no greater
20 than the rates charged by long-distance carriers regulated by the Telecommunications
21 [REGULATORY] Commission of Alaska or by the Federal Communications
22 Commission.

23 * Sec. 16. AS 42.05.381(f) is amended to read:

24 (f) A local exchange telephone utility may adjust its rates in conformance with
25 changes in jurisdictional cost allocation factors required by either the Federal
26 Communications Commission or the Telecommunications [REGULATORY]
27 Commission of Alaska upon a showing to the Telecommunications
28 [REGULATORY] Commission of Alaska of

29 (1) the order requiring the change in allocation factors;

30 (2) the aggregate shift in revenue requirement, segregated by service
31 classes or categories, caused by the change in allocation factors; and

1 (3) the rate adjustment required to conform to the required shift in
2 local revenue requirement.

3 * Sec. 17. AS 42.05.712(c) is amended to read:

4 (c) Each subscriber or member of the utility or cooperative shall receive notice
5 of an election under this section with the subscriber's or member's regular bill for
6 service at least 60 days before the date set for the election. The notice must [SHALL]
7 contain impartial language informing the subscribers or members that an election on
8 the option of deregulation or regulation by the Regulatory Commission of Alaska or
9 the Telecommunications Commission of Alaska, as applicable, will be held within
10 60 days and that a ballot to participate in that election will be mailed or delivered to
11 each subscriber or member of the utility or cooperative with the regular bill for
12 service. The notice must [SHALL] also state that a subscriber or member of the
13 cooperative is entitled to vote in the election without regard to whether the subscriber's
14 or member's account with the utility or cooperative is current and that the ballot must
15 be postmarked or returned to the commission within 30 days after it was mailed or
16 otherwise delivered to the subscriber or member. The notice must [SHALL] also
17 announce the schedule for one or more public meetings which shall provide an
18 opportunity for the subscribers or members to discuss this election. The public
19 meeting or meetings shall be held not more than 30 days before the ballots are mailed
20 or distributed to those eligible to vote. A cooperative may satisfy this requirement by
21 including a discussion of this election on the agenda of an annual meeting if the annual
22 meeting is scheduled to be held not more than 30 days before the election.

23 * Sec. 18. AS 42.05.712(d) is amended to read:

24 (d) A ballot with return postage paid shall be mailed or delivered to each
25 subscriber or member of the utility or cooperative with the subscriber's or member's
26 bill for service and shall contain only the following language:

27 "Shall. (name of utility or cooperative) be exempt
28 from regulation by the (Regulatory or Telecommunications)
29 Commission of Alaska?

30 [] YES [] NO"

31 * Sec. 19. AS 42.05.990(2) is amended to read:

1 (2) "commission" means the Regulatory Commission of Alaska in
2 regard to all matters concerning public utilities except for telecomm.unications
3 utilities, and "commission" means the Telecommunications Commission of
4 Alaska in regard to all matters concerning telecommunications utilities;

5 * Sec. 20. AS 42 is amended by adding a new chapter to read:

6 **Chapter 08. Telecommunications Commission.**

7 **Sec. 42.08.010. Telecommunications Commission of Alaska created. (a)**

8 There is created within the Department of Community and Economic Development as
9 an independent agency of the state the Telecommunications Commission of Alaska.

10 (b) The Telecommunications Commission of Alaska shall regulate, adjudicate
11 and otherwise exercise its powers over all sections of AS 42.05 relating to
12 telecommunications services.

13 (c) The Telecommunications Commission of Alaska may do all things
14 necessary or proper to carry out the purposes and exercise the powers expressly
15 granted or reasonably implied in this chapter, including

16 (1) regulate every telecommunications utility engaged or proposing to
17 engage in a telecommunications business inside the state, except to the extent
18 exempted by AS 42.05.711;

19 (2) investigate, upon complaint or upon its own motion, the rates,
20 classifications, rules, regulations, practices, services, and facilities of a
21 telecommunications utility and hold hearings on them;

22 (3) make or require just, fair, and reasonable rates, classifications,
23 regulations, practices, services, and facilities for a telecommunications utility;

24 (4) prescribe the system of accounts and regulate the service and safety
25 of operations of a telecommunications utility;

26 (5) require a telecommunications utility to file reports and other
27 information and data;

28 (6) appear personally or by counsel and represent the interests and
29 welfare of the state in all matters and proceedings involving a telecommunications
30 utility pending before an officer, department, board, commission, or court of the state
31 or of another state or the United States and to intervene in, protest, resist, or advocate

1 the granting, denial, or modification of any petition, application, complaint, or other
2 proceeding;

3 (7) examine witnesses and offer evidence in any proceeding affecting
4 the state and initiate or participate in judicial proceedings to the extent necessary to
5 protect and promote the interests of the state.

6 **Sec. 42.08.020. Commissioners.** (a) The commission consists of three
7 commissioners appointed by the governor and confirmed by the legislature in joint
8 session. To qualify for appointment as a commissioner, a person must be a member in
9 good standing of the Alaska Bar Association or have a degree from an accredited
10 college or university with a major in engineering, finance, economics, accounting,
11 business administration, or public administration. Actual experience for a period of
12 five years in the field of engineering, finance, economics, accounting, business
13 administration, or public administration is equivalent to a degree.

14 (b) When a vacancy occurs in the office of chair, the commission may
→ 15 nominate one of its members to serve as chair. When a vacancy occurs in the office of
16 chair, the governor shall designate the chair of the commission, either by selecting the
17 member nominated by the commission or another member. The term of the chair is
18 four years. The chair may not be appointed to successive terms as chair.

19 (c) Members of the commission are appointed for staggered terms of five
20 years. A commissioner, upon the expiration of a term, shall continue to hold office
21 until a successor is appointed and qualified.

22 (d) A vacancy arising in the office of a commissioner shall be filled by
23 appointment by the governor and confirmed by the legislature in joint session, and,
24 except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall
25 hold office for the balance of the full term for which the predecessor on the
26 commission was appointed.

27 (e) A vacancy in the commission does not impair the authority of a quorum of
28 commissioners to exercise all the powers and perform all the duties of the
29 commission.

30 (f) The governor may remove a commissioner from office for cause, including
31 incompetence, neglect of duty, inability to serve, or misconduct in office or because

1 the member, while serving on the commission, is convicted of a misdemeanor for
2 violating a statute or regulation related to telecommunications utilities or is convicted
3 of a felony. A commissioner, to be removed for cause, shall be given a copy of the
4 charges and afforded an opportunity to be publicly heard in person or by counsel in the
5 commissioner's own defense upon not less than 10 days' notice. If a commissioner is
6 removed for cause, the governor shall file with the lieutenant governor a complete
7 statement of all charges made against the commissioner and the governor's finding
8 based on the charges, together with a complete record of the proceedings.

9 (g) Members of the commission are in the exempt service and are entitled to a
10 monthly salary equal to Step C, Range 26, of the salary schedule in AS 39.27.011(a)
11 for Juneau, Alaska. The chair of the commission is entitled to a monthly salary equal
12 to Step C, Range 27, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

13 (h) Each commissioner, before entering upon the duties of office, shall take
14 and subscribe to the oath prescribed for principal officers of the state.

15 **Sec. 42.08.030. Principal office; seal.** (a) The commission shall establish a
16 principal office and branch offices necessary to discharge its business efficiently. For
17 the convenience of the public or of parties to a proceeding, the commission may hold
18 meetings, hearings, or other proceedings at other locations.

19 (b) The commission shall have an official seal.

20 **Sec. 42.08.040. Legal counsel.** (a) The Department of Law shall provide full-
21 time legal counsel to the commission.

22 (b) The commission may, subject to the approval of the attorney general,
23 contract for the services of specialized legal counsel or legal consultants.

24 **Sec. 42.03.050. Employment of commission personnel.** (a) The chair of the
25 commission is responsible for directing the administrative functions of the
26 commission and carrying out the policies as set by the commission. The commission
27 chair may employ engineers, hearing examiners, administrative law judges, arbitrators,
28 mediators, experts, clerks, accountants, and other agents and assistants considered
29 necessary. Employees of the commission who are not in the exempt service under
30 AS 39.25.110 or the partially exempt service under AS 39.25.120 are in the classified
31 service under AS 39.25.100.

1 (b) The chair of the commission may enter into a contract for not more than
2 \$5,000 to engage the services of a consultant or expert the chair considers necessary.
3 The commission may contract for and engage the services of consultants and experts
4 the commission considers necessary.

5 **Sec. 42.08.060. Restrictions on members and employees.** (a) A member of
6 the commission or an employee of the commission may not have an official
7 connection with, hold stock or securities in, or have a pecuniary interest in a
8 telecommunications utility within the state. Membership in a cooperative association
9 is not a "pecuniary interest" within the meaning of this section; however, a member or
10 employee of the commission may not be an officer, board member, or employee of a
11 cooperative association. A member or employee may not act upon a matter in which a
12 relationship of the member or employee with any person creates a conflict of interest.

13 (b) A member or employee of the commission may not, after leaving the
14 position as a member or employee of the commission, act as agent for or on behalf of
15 a telecommunications utility in any matter before the commission that was before the
16 commission during the employee's employment or the member's term of office. A
17 violation of this subsection is a class A misdemeanor.

18 (c) Members and employees of the commission, except clerical and secretarial
19 staff, are subject to AS 39.50. Members and employees of the commission are subject
20 to AS 39.52.

21 (d) A member of the commission is disqualified from voting upon any matter
22 before the commission in which the member has a conflict of interest.

23 **Sec. 42.08.070. Powers and duties of commission chair.** (a) The chair of
24 the commission shall

- 25 (1) employ the commission staff;
26 (2) establish and implement a time management system for the
27 commission;
28 (3) assign the work of the commission to members and staff of the
29 commission so that matters before the commission are resolved as expeditiously and
30 competently as possible; when assigning a matter, the chair shall also set a date by
31 which time the matter should be completed.

1 (b) The chair of the commission may appoint a hearing examiner or an
2 administrative law judge to hear a matter that has come before the commission; a
3 member of the commission may serve as hearing examiner or, if qualified, as an
4 administrative law judge.

5 (c) The chair of the commission shall direct the public advocacy section to
6 participate as a party in a matter when the commission believes that it is in the public
7 interest to do so.

8 **Sec. 42.08.080. Decision-making procedures.** (a) Except as provided in
9 AS 42.05.171, when a matter comes for decision before the commission under
10 AS 42.05, the three commissioners shall serve as a hearing panel to hear, or if a
11 hearing is not required, to otherwise consider, and decide the case. The panel shall
12 exercise the powers of the commission with respect to the matter.

13 (b) The commission shall adopt regulations by December 31, 2003, that
14 establish standards of timeliness for the types of cases that come before the
15 commission. The commission shall establish standards based in part on degrees of
16 complexity of the cases.

17 (c) A member of a hearing panel appointed under (a) of this section may not
18 have or have had an ex parte communication on a substantive matter that is pending or
19 likely to come before the panel with a party to the proceeding.

20 (d) The chair may not appoint the members of a hearing panel if the chair has
21 had an ex parte communication on the matter before the panel, and the chair shall
22 delegate the appointment power to the next most senior commissioner who has not had
23 an ex parte communication in that matter.

24 (e) For purposes of (c) and (d) of this section, an ex parte communication is a
25 direct or indirect communication on a substantive matter that is pending or likely to
26 come before the commission between a commissioner and a party without the
27 opportunity for all other parties to be present. However, a communication occurring
28 more than two years before the filing of the matter with the commission does not
29 disqualify a person under (c) or (d) of this section. Circumstances that might
30 reasonably suggest to a third party that an ex parte contact had occurred, even if none
31 was made, shall be considered an ex parte contact for purposes of (c) and (d) of this

1 section.

2 **Sec. 42.08.090. Impartial decision-making.** (a) A hearing panel and each
3 member of the hearing panel shall accord to every person the right to be heard
4 according to law. A member of a hearing panel shall not initiate, permit, or consider
5 an ex parte communication or other communication made to the member of a hearing
6 panel outside the presence of the parties concerning a pending or impending
7 proceeding except as allowed by this section. Members of a hearing panel shall make
8 reasonable efforts to see that law clerks and other commission staff carrying out
9 similar functions under the hearing panel's supervision do not violate the provisions of
10 this section.

11 (b) A hearing panel and each member of the hearing panel may initiate or
12 consider an ex parte communication when expressly authorized by law to do so.

13 (c) When circumstances require, a hearing panel and each member of the
14 hearing panel may engage in ex parte communications for scheduling or other
15 administrative purposes if (1) the communications do not deal with substantive matters
16 or the merits of the issues litigated; (2) the hearing panel and each member of the
17 hearing panel reasonably believe no party will gain a procedural or tactical advantage
18 because the communication is ex parte; and (3) the hearing panel and each member of
19 the hearing panel take reasonable steps to notify all other parties promptly of the
20 substance of the ex parte communication and, when practicable, allow them an
21 opportunity to respond. This subsection does not apply to ex parte communications by
22 commission staff concerning scheduling or administrative matters.

23 (d) If the parties agree, either in writing or on the record, to this procedure
24 beforehand, a hearing panel and each member of the hearing panel may engage in ex
25 parte communications on specified administrative topics with one or more parties.

26 (e) A hearing panel and each member of the hearing panel may consult other
27 members of the panel and commission staff whose function is to aid the hearing panel
28 in carrying out its adjudicative responsibilities.

29 (f) A hearing panel and each member of the hearing panel may, with the
30 consent of the parties, confer separately with the parties and their lawyers in an effort
31 to mediate or settle matters pending before the hearing panel.

1 **Sec. 42.08.100. Communications carriers section.** There is established
2 within the commission a communications carriers section that shall develop,
3 recommend, and administer policies and programs with respect to the regulation of
4 rates, services, accounting, and facilities of communications common carriers within
5 the state involving the use of wire, cable, radio, and space satellites.

6 **Sec. 42.08.150. Public advocacy section.** There is established within the
7 commission a public advocacy section. The section shall participate as a party in
8 matters that come before the commission when directed to do so in accordance with
9 AS 42.08.070(c). The public advocacy section shall operate separately from the rest of
10 the commission.

11 * **Sec. 21.** AS 44.66.010(a)(4) is amended to read:

12 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2003
13 [2002];

14 * **Sec. 22.** AS 44.66.010(a) is amended by adding a new paragraph to read:

15 (21) Telecommunications Commission of Alaska (AS 42.08.010) --
16 June 30, 2006.

17 * **Sec. 23.** AS 45.50.473(a) is amended to read:

18 (a) A person may not provide an alternate operator service without disclosing
19 to the consumer before a charge is incurred the cost of the service provided by the
20 person and the identity of the person providing those services. This section does not
21 affect the power of the Telecommunications [REGULATORY] Commission of
22 Alaska to regulate providers of alternate operator services under AS 42.05 in a manner
23 consistent with this section.

24 * **Sec. 24.** AS 45.50.473(b) is amended to read:

25 (b) The owner of a place where telephone business from consumers is
26 aggregated, including a hotel, motel, hospital, and pay telephone other than a
27 telephone utility regulated by the Telecommunications [REGULATORY]
28 Commission of Alaska, shall disclose a surcharge added to the cost of local or long
29 distance telephone service before the service is provided. Disclosure may be made by
30 posting the amount of the surcharge on or near the telephone instruments subject to the
31 surcharge or by other reasonable written or oral means.

1 * **Sec. 25.** AS 45.50.475(b) is amended to read:

2 (b) A local exchange telecommunications company and a company that
3 provides a telephone directory on behalf of a local exchange telecommunications
4 company shall provide for the identification in the telephone directory of those
5 residential customers who do not wish to receive telephone solicitations. The local
6 exchange telecommunications company may impose a reasonable charge for
7 identification in the directory. The charge shall be based on the cost of providing the
8 identification and is subject to the approval of the Telecommunications
9 [REGULATORY] Commission of Alaska.

10 * **Sec. 26.** AS 45.50.475(c) is amended to read:

11 (c) A local exchange telecommunications company shall, upon request,
12 provide to a person who engages in telephone solicitation a list of all telephone
13 numbers identified in the telephone directory as residential customers who do not wish
14 to receive telephone solicitations. If possible and if requested by the person who
15 engages in telephone solicitations, this list shall be provided in computer readable
16 format. The local exchange telephone company may impose a reasonable charge for
17 the list. The charge shall be based on the cost of providing the list and is subject to the
18 approval of the Telecommunications [REGULATORY] Commission of Alaska.

19 * **Sec. 27.** AS 45.63.080(12) is amended to read:

20 (12) by a person who is soliciting for a business, or for an affiliate of a
21 business, that is regulated by the Telecommunications [REGULATORY]
22 Commission of Alaska;

23 * **Sec. 28.** AS 46.03.030(b) is amended to read:

24 (b) The department may grant to a municipality or, to the extent allowed
25 under (i) of this section, to a public utility, as funds are available, a grant for any of
26 the following:

- 27 (1) a water quality enhancement project;
28 (2) a public water supply, treatment, or distribution system;
29 (3) a wastewater collection, treatment, or discharge system;
30 (4) a solid waste processing, disposal, or resource recovery system.

31 * **Sec. 29.** AS 46.03.030(e) is amended to read:

1 (e) A grant under this section to a municipality or public utility eligible
2 under (i) of this section for a project funded by an appropriation made by the
3 legislature

4 (1) before July 1, 1994, may not exceed 50 percent of the eligible costs
5 of the project;

6 (2) after July 1, 1994, may not exceed

7 (A) 85 percent of the eligible costs for a municipality with a
8 population of 1,000 persons or less or a utility with 1,000 or fewer
9 customers;

10 (B) 70 percent of the eligible costs for a municipality with a
11 population of 1,001 to 5,000 persons or a utility with 1,000 to 5,000
12 customers; and

13 (C) 50 percent of the eligible costs for a municipality with a
14 population greater than 5,000 persons; however, if a municipality with a
15 population greater than 5,000 persons seeks a grant for a project that relates to
16 a solid waste processing or disposal system that incorporates resource
17 recovery, the department may provide a grant for up to 60 percent of the
18 eligible costs of the project.

19 * **Sec. 30.** AS 46.03.030 is amended by adding a new subsection to read:

20 (i) A public water and sewer utility is eligible for a grant for projects described
21 in (b)(1) - (3) of this section if its rates are regulated by the Regulatory Commission of
22 Alaska under AS 42.05.

23 * **Sec. 31.** AS 42.04.100 is repealed.

24 * **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 APPLICATION OF TIMELINES TO NEW AND EXISTING DOCKETS. The
27 timelines provided in AS 42.05.175, added by sec. 13 of this Act, apply to all new dockets of
28 the Regulatory Commission of Alaska filed on or after July 1, 2002. For dockets commenced
29 before July 1, 2002, the date of July 1, 2002, shall be used as the date of filing for the purpose
30 of applying the timelines in AS 42.05.175.

31 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TASK FORCE INQUIRY INTO REGULATORY COMMISSION OF ALASKA. (a)
3 A task force is established to inquire into all aspects of the operation of the Regulatory
4 Commission of Alaska. The members of the task force shall be appointed as follows: three
5 people by the president of the senate, three people by the speaker of the house of
6 representatives, and one person by the governor.

7 (b) The task force shall immediately perform a comprehensive review of the
8 commission and its operations. The task force shall present a written report to the legislature
9 not later than January 30, 2003. The task force is terminated upon the presentation of the
10 written report to the legislature. The task force shall make specific recommendations in its
11 report advising the legislature regarding

12 (1) the type of arbitration best suited to rate and tariff issues;

13 (2) the ^{approp. level} extent of ~~de~~regulation of the electric and telephone cooperatives
14 organized under AS 10.25 and the extent of ~~de~~regulation of municipally owned utilities.

15 (c) The task force shall have access to all information, including confidential
16 information, in the custody of the commission. The task force shall maintain the
17 confidentiality of any confidential information accessed. Confidential information may not be
18 disclosed in the written report prepared under (b) of this section.

19 * Sec. 34. The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 POWERS AND DUTIES OF REGULATORY COMMISSION OF ALASKA AND
22 TELECOMMUNICATIONS COMMISSION OF ALASKA IN THE YEAR AFTER
23 ^{EX}TERMINATION. Notwithstanding AS 44.66.010(b), the powers and duties of the Regulatory
24 Commission of Alaska and the Telecommunications Commission of Alaska in the year
25 following ~~termination~~ are not reduced or otherwise limited, and each commission shall
26 continue in existence after ~~termination~~ for one year. Each commission shall continue to
27 exercise all its powers and perform its duties and responsibilities under AS 42 during the year
28 following its ~~termination~~.

29 * Sec. 35. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 INITIAL APPOINTMENTS TO TELECOMMUNICATIONS COMMISSION OF

1 ALASKA. Notwithstanding AS 42.08.020(c), added by sec. 20 of this Act, and
2 AS 39.05.055, one initial member of the Telecommunications Commission of Alaska shall be
3 appointed for a term of one year, one initial member of the Telecommunications Commission
4 of Alaska shall be appointed for a term of three years, and one initial member of the
5 Telecommunications Commission of Alaska shall be appointed for a term of five years.

6 * Sec. 36. Sections 1 - 7, 12, 15 - 20, 22 - 27, and 31 of this Act take effect January 1, 2003.

7 * Sec. 37. Except as provided in sec. 36 of this Act, this Act takes effect immediately under
8 AS 01.10.070(c).

SENATE JUDICIARY COMMITTEE - ROLL CALL VOTE

DATE: 6/26

BILL: *Therriault - chair*
MOTION:

MEMBER	YEA	NAY	ABSENT
DONLEY		✓	
COWDERY		✓	
THERRIAULT	✓		
ELLIS	✓		
TAYLOR		✓	
TOTAL	2	3	

BILL: MOTION:

MEMBER	YEA	NAY	ABSENT
COWDERY			
THERRIAULT			
ELLIS			
DONLEY			
TAYLOR			
TOTAL			

BILL: MOTION:

MEMBER	YEA	NAY	ABSENT
THERRIAULT			
ELLIS			
DONLEY			
COWDERY			
TAYLOR			
TOTAL			

BILL: MOTION:

MEMBER	YEA	NAY	ABSENT
ELLIS			
DONLEY			
COWDERY			
THERRIAULT			
TAYLOR			
TOTAL			

OK to share w/ ext. w/ 1/15 but not for 1/16 and GCI proposal

HB 111

~~CS FOR HOUSE BILL NO 333 (11)~~

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY:

Offered:
Referred:

Sponsor(s):

A BILL

FOR AN ACT ENTITLED

"An Act setting timelines for issuance of final orders by the Regulatory Commission of Alaska, amending the authority of the commission to enter compromise settlement orders, establishing a process for further reform of commission practices and procedures, and extending the commission's termination date to June 30, ²⁰²⁴ ~~2006~~; and providing for an effective date."

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

*Section 1. AS 42.05 is amended by adding a new section to read:

Sec. 42.05.175. Timelines for issuance of final orders. (a) The commission shall issue a final order not later than six months after a complete

application is filed for an application

- (1) for a certificate of public convenience and necessity;
- (2) to amend a certificate of public convenience and necessity;
- (3) to transfer a certificate of public convenience and necessity;

and

(4) to acquire a controlling interest in a certificated public utility.

(b) Notwithstanding a suspension ordered under AS 42.05.421, the commission shall issue a final order not later than nine months after a complete tariff filing is made for a tariff filing that does not change the utility's revenue requirement or rate design.

(c) Notwithstanding a suspension ordered under AS 42.05.421, the commission shall issue a final order not later than 15 months after a complete tariff filing is made for a tariff filing that changes the utility's revenue requirement or rate design.

(d) The commission shall issue a final order not later than 12 months after a complete formal complaint is filed against a utility or, when the commission initiates a formal investigation of a utility without the filing of a complete formal complaint, not later than 12 months after the order initiating the formal investigation is issued.

(e) The commission shall issue a final order in a rule making proceeding not later than 24 months after a complete petition for adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290 is filed or, when the commission initiates a rule making docket, not later than 24 months after the order initiating the proceeding is issued.

(f) The commission may extend a timeline required under (a) - (e) of this section if all parties of record consent to the extension or if, before the timeline expires, the commission

(1) reasonably finds that good cause exists to extend the timeline; and

(2) issues a written order extending the timeline and setting out its findings regarding good cause.

(g) The commission shall file provide copies of all written orders issued under (f)(2) of this section to each member of the legislature within 30 days after issuance of such order.

(h) If the commission does not issue and serve a final order regarding an application or suspended tariff under section (a), (b), or (c) of this section within the applicable timeline specified, and if the commission does not extend the timeline in accordance with (f) of this section, the application or suspended tariff filing shall be considered approved and shall go into effect

immediately.

(i) For purposes of this section, "final order" means a dispositive 2 administrative order that resolves all matters at issue and that may be the basis for a petition for reconsideration or request for judicial review.

(j) For purposes of this section, an application, tariff filing, formal complaint, or petition is complete if it complies with the filing, format, and content requirements established by statute, regulation, and forms adopted by the commission under regulation.

* Sec. 2. AS 42.05.191 is amended to read:

Sec. 42.05.191. Contents and service of orders. Every formal order of the commission shall be based upon the facts of record. However, the commission shall issue an order approving any settlement supported by all the parties of record in a proceeding, including a promise settlement, unless the commission finds that the settlement is consistent with AS 42.05, AS 42.06, or the public interest. Every order entered pursuant to a hearing must state the commission's findings, the basis of its findings and conclusions, together with its decision. These orders shall be entered of record and a copy of them shall be served on all parties of record in the proceeding.

* Sec. 3. AS 44.66.010(a)(4) is amended to read:

(4) Regulatory Commission of Alaska (AS 42.04.010) June 30,

2004 [2002];

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PRIOR DOCKETS. The provisions of AS 42.05.175, added by sec. 1 of this Act do not apply to dockets of the Regulatory Commission of Alaska that are initiated before July 1, 2002.

***Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

ADVISORY COMMITTEE: No later than October 31, 2002, the chair of the commission shall appoint a committee to investigate and propose reforms to the commission's regulatory process. The committee shall include one member of the commission, one member representing incumbent local exchange carriers, one member representing competitive local exchange carriers, one member representing electric utilities, one member representing natural gas utilities, one member representing water and or sewer utilities, and one member representing the public advocacy section. Where possible, the chair shall honor nominations from the represented group. The committee shall hold open meetings and receive comment from the public and all regulated utilities. No later than October 31, 2003, the committee shall prepare a report to the commission and the legislature addressing this following issues: how to reduce the backlog of cases

and other matters pending before the commission; how to revise the processes of the commission to assure that fewer issues must be tried in trial-like proceedings; whether the deadlines established in this legislation require further amendment; what areas for which the commission is currently responsible provide the highest public benefit and which produce lower public benefit; identification of areas of regulatory oversight that may be eliminated.

*Sec 6. The uncodified law of the State of Alaska is amended by adding a new section to read:

INFORMAL MEETINGS: The commission shall, approximately once per month, hold informal meetings at which the public and representatives of all regulated utilities may informally discuss issues involving the process and procedures of the commission. Such meetings shall be transcribed and must be attended by at least one commissioner.

* Sec. 7. This Act takes effect immediately under AS 01 .10.070(c).

SJR

11



SENATOR JERRY WARD
ALASKA STATE LEGISLATURE

SPONSOR STATEMENT FOR SJR 11

Providing Constitutional Protection for the Permanent Fund Dividend Program

SJR 11 proposes amendments to the Constitution of the State of Alaska to guarantee the permanent fund dividend program, to provide for inflation proofing, and to require a vote of the people before changing the statutory formula for distribution that existed on January 1, 2001

The Alaska Constitution protects the principal of the Permanent Fund, but the earnings of the fund have no constitutional protection. The next step in taking the wishes of the people seriously is to protect the earnings as well as the principal and to guarantee inflation proofing. SJR 11 will, by constitutional amendment, guarantee the dividend program as it has successfully functioned for 19 years and provide for inflation proofing. The adoption of SJR 11 would mean that the dividend program and inflation-proofing program would no longer be at the mercy of the legislature and the Governor.

SJR 11 would require a vote of the people to make any changes to the dividend program. It would also require a vote of the people to make any changes to the way the Permanent Fund is inflation-proofed.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SJR 11
 () Publish Date: _____

Revision Date/Time (Note if correction): 4/17/01 10:00 AM Dept. Affected: Revenue
 Title: Permanent Fund Income Distribution BRU: Alaska Permanent Fund Corp.
 Component: Alaska Permanent Fund Corp.
 Sponsor: Senator Ward
 Requester: Senate Judiciary Component Number: 109

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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	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 proposed legislation would not increase the cost of operations for the Alaska Permanent Fund Corporation.

Prepared by: Robert D. Storer, Executive Director Phone (907)465-2047
 Division Alaska Permanent Fund Corporation Date/Time 4/17/01 10:00 AM
 Approved by: Larry Persily, Deputy Commissioner Date 04/17/2001 1 p.m.
 Agency Department of Revenue

For distribution information, call the Governor's Legislative Office

SJR

13

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SJR 13
 (S) Publish Date: 4/17/02

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title: Constitutional amendment relating BRU: Elections
inflation-proofing the permanent fund Component: Elections
 Sponsor: Rules
 Requester: Senate State Affairs Component No. 21

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	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

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						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gall Fenumial, Election Administrative Supervisor
 Division: Division of Elections
 Approved by: Lieutenant Governor Fran Ulmer
 Agency: Office of the Lieutenant Governor

Phone: 465-3935
 Date/Time: 2/15/02 2:43 PM
 Date: 02/15/2002



Alaska Permanent Fund Corporation

P.O. Box 25500 Juneau, AK 99802-5500


Telephone (907) 465-2047

Facsimile (907) 586-2057

MEMORANDUM

DATE: April 19, 2002

TO: Senator Robin Taylor
Chair, Senate Judiciary Committee

FROM: Robert D. Storer 
Executive Director

SUBJECT: Request for a hearing on SJR 13

This is to request that you schedule a Senate Judiciary Committee hearing at your earliest convenience to consider Senate Joint Resolution 13, "Proposing amendments to the Constitution of the State of Alaska relating to inflation-proofing the permanent fund."

SJR 13 is supported unanimously and with passion by the Alaska Permanent Fund Corporation (APFC) Board of Trustees. It is an important piece of legislation which, if approved by the legislature and the voters in the 2002 General Election, will ensure that the Permanent Fund remains permanent and able to provide dependable and growing benefits for current and future generations.

As the state struggles to plan for its future in a period of declining oil revenues, two outcomes are certain: (1) Fund income will play an increasingly important role in the state's fiscal and economic future; and (2) passing SJR 13 and providing for complete and protected inflation-proofing is the only way to ensure that the Fund's income stream in the future will be maximized on a sustainable basis.

Senator Taylor, the staff and the Board of the APFC look forward to working with you and the members of your Committee on this critical issue.

**REQUEST FOR
HEARING**



Alaska Permanent Fund Corporation

P.O. Box 25500 Juneau, AK 99802-5500

Telephone (907) 465-2047

Facsimile (907) 586-2057

MEMORANDUM

DATE: April 23, 2002

TO: Senator Robin Taylor
Chair, Senate Judiciary Committee

FROM: Robert D. Storer *RDS*
Executive Director

SUBJECT: Request for amendments to CSSJR 13(STA)

We have reviewed CSSJR 13(STA) and offer the following comments, along with a request for two specific changes.

Although the State Affairs Committee Substitute made a number of changes to the constitutional amendment as originally proposed by the APFC Board of Trustees, we believe that it continues to achieve the Board's primary concerns. Those concerns are assuring that (1) only Fund income can be spent and (2) the amount of income that can be spent annually is limited by a percent of market value computation that will assure inflation-proofing of the Fund over the long term.

A derivative concern, which arose in the course of State Affairs' deliberations on the bill, is assuring that "income" for purposes of the constitutional provision is not limited to just "realized income," but includes also "unrealized income" of the Fund. Inclusion of unrealized income as a part of Fund income is appropriate because doing so is consistent with applicable generally accepted accounting principles (GAAP) for financial reporting purposes. Subject to adoption of our amendment proposed below, we believe that the State Affairs adopted version of SJR 13 properly addresses that concern.

**REQUEST FOR
AMENDMENT**

After reviewing the State Affairs adopted version of the bill, APFC counsel raised a question about the intended effect of the transitional provision set out in Sec. 3 of the bill. He pointed out that the statutory earnings reserve account established by AS 37.13.145 consists only of income of the Fund. He was concerned, therefore, about the effect of the transitional provision which presently states that "...*the portion of the earnings reserve account (AS 37.13.145) that consists of income of the permanent fund is transferred...*"(emphasis added). The italicized language creates a potential interpretation problem, as it suggests that there is some other portion of the earnings reserve account that is not to be transferred to the earnings reserve account established by the constitutional amendment. Our understanding of the transitional provision (and, we believe, the intent of State Affairs) is that the entire value of the statutory earnings reserve account is to be transferred to the constitutional account.

We also note what appears to be a typographical error in the text of the proposed transitional provision which transfers the balance of the statutory earnings reserve account to the newly created constitutional earnings reserve account. In referring to the constitutional account, the transitional provision describes it as "the earnings reserve account established in Section 15(b) of Article IX." In looking at the proposed amendments to art. IX, sec. 15, however, this constitutional account is actually established by new language inserted into the newly created subsection (a) of Section 15, rather than the new subsection (b).

APFC counsel has discussed both concerns with Tam Cook, Director of Legislative Legal. Ms. Cook agrees that the italicized language creates an unnecessary issue and stated that she would not object to an amendment to the transitional provision that deleted it. She also agrees that the reference to Section 15(b) should be changed to Section 15(a). Accordingly, we recommend that the language of the new art. XV, sec. 30 of the Alaska Constitution proposed by Sec. 3 of the bill be revised to read as follows (shown in legislative drafting style for clarity of changes):

Sec. 30. Transition. On the effective date of the 2002 amendments relating to the Alaska permanent fund (art. IX, sec. 15), the balance [PORTION] of the statutory earnings reserve account (AS 37.13.145) [THAT CONSISTS OF INCOME] of the permanent fund is transferred to the earnings reserve account established in Section 15(a) [15(b)] of Article IX.

In addition to adopting the above amendment, we would also urge the Judiciary Committee to change the bill's title back to the way it read when this constitutional amendment was initially proposed by the Board of Trustees and then introduced in the Senate as SJR 13 ("*Proposing amendments to the Constitution of the State of Alaska relating to inflation-proofing the permanent fund.*") Particularly as the language of the bill becomes more complex, we believe it is important to present the voters with a simple, yet

Proposed SJR 13 Amendments

April 23, 2002

Page 3

accurate, description of the purpose of the bill which they can readily identify and understand. In the voting booth, we believe that the voters are more likely to support the bill and vote in favor of it if the bill's title explicitly describes it as providing for inflation-proofing.

Thank you for your consideration. Please let me know if you have any additional questions.

cc: Board of Trustees
Governor's Chief of Staff
Governor's Legislative Liaison
Members, Senate State Affairs Committee

Senator Gene Therriault, Chairman
Senate State Affairs Committee
Capitol Building, Room 121
Juneau, Alaska 99801

February 21, 2002

Chairman and Members of Senate State Affairs,

My name is Jay Hogan, my wife and I live at 10741 Horizon Drive in Juneau Alaska and I am here today representing no one other than myself. For the record let me stipulate that at an earlier time, it would never have occurred to me to appear before any committee of the Alaska Legislature in opposition to a measure introduced by the Legislative Budget and Audit Committee!

In January 1970, Governor Keith Miller requested introduction of three measures to establish a "resources permanent fund". In a transmittal letter, Governor Miller stated, the "objective is to assure maximum long-term growth [of the fund] while providing an annually increasing source of income to the general fund." The two bills in the package passed the Senate but failed to move in the House. The third, a Constitutional amendment, made five percent of permanent fund market value annually available for "appropriation for general purposes"; this resolution failed to pass the Senate.

In March 1975, prompted by public concern over the disappearance of the \$900 million North Slope lease bonus, 36 Members of the House co-sponsored HB 324 establishing the "Alaska mineral lease bonus permanent fund". Fund principal was to be "invested in perpetuity"; fund income could be, "appropriated to provide funding for operating or capital expenditures for loan or grant programs" eligible for funding under the law. The Legislature passed this statutory permanent fund only to have it vetoed by Governor Jay Hammond as an "unconstitutional dedication of revenue".

In January of 1976, Governor Hammond submitted a sponsor substitute for HJR 39, his 1975 end-of-Session "fix" for the dedicated revenue problem. The substitute was a Constitutional amendment establishing the Alaska Permanent Fund. In his transmittal letter Governor Hammond emphasized, "The income of the fund would be deposited into the general fund without any permanent fund restrictions." The Resolution as introduced read; "All income from the permanent fund shall be deposited in the general fund." House Finance added, "unless otherwise provided by law" completing the sentence as it stands today, unchanged from 1976.

Mike Bradner, Speaker of the House in 1975-76, wrote in the March 1988 Juneau Report:
"The constitutional action creating the fund was also "not about" a lot of things. It was not about dividends, investment policy, unreserved income, and in fact, did not even attempt to tell Alaskans "when" and under "what" circumstances the proceeds of the fund might one day accrue to future Alaskans.

Discussion over the Permanent Fund often takes on a biblical connotation. But amidst all this rhetoric, the simple foundation of the Fund is embraced in the two

**INFORMATION
STATEMENT**

previously stated commandments – *to preserve a portion of current oil income, and to preserve it as a future "trust"*.

All the rest of the development of the Alaska Permanent Fund is essentially left to statutory construction. Future Legislatures through general law, as opposed to constitutional law, were left to fill in the details of the Fund. These details included creation of the Alaska Permanent Fund Corporation, the rules of "inflation-proofing" (injecting some Fund earnings into the principal to account for inflation), creation of the dividend program, investment policy, and so on. These details were to be created, and to be changed as need be, by future generations of lawmakers.

What the lawmakers of 1976, in creating the Fund, were trying to avoid was "playing god". They did not want to try to foretell the future – to dictate future policy. As much as possible, commensurate with the basic task of creating the fund, the architects of the Fund did not want to tie the hands of future generations of lawmakers."

On average, SJR 13 would reduce by one third the amount of Permanent Fund income annually available for appropriation by the Alaska Legislature. Currently the Legislature appropriates that "third" as shown in the following appropriation from Chapter 60, SLA 2001:

"Sec. 8. ALASKA PERMANENT FUND CORPORATION. (a) . . .

(b) After money is transferred to the dividend fund under (a) of this section, the amount calculated under AS 37.13.145 to offset the effect of inflation on the principal of the Alaska permanent fund is appropriated from the earnings reserve account (AS 37.13.145) to the principal of the Alaska permanent fund.

The 2001 Permanent Fund Corporation Annual Report gives credit to the long running success of this method of appropriation for inflation proofing. On close inspection, the caption for the inflation graphic on page 17 reads, "Inflation has eroded the purchasing power of \$1.00 in 1982 to 48 cents in 2001 . . . — but inflation-proofing has maintained the Fund's real value".

Unlike most other state permanent funds, the Alaska Permanent Fund has been inflation proofed for the past 20 Years. Largely "under reported" throughout the 26-year history of the Alaska Permanent Fund is the part played by the Alaska Legislature in increasing Fund principal. Relegated to the "Notes to Financial Statements" on page 38 of the Permanent Fund Corporation's Annual Report 2001, the principal balance of the Fund at June 30, 2001, was listed by source:

Dedicated State revenues	\$7,070,741,000
Appropriations from the State	6,885,906,000
Inflation-proofing	6,929,350,000
Settlement earnings	161,582,000
Total Principal	\$21,047,579,000

The Constitutional provision dedicating 25% of certain mineral revenues to the Permanent Fund produced a \$7.1 billion Fund principal as of June 30, 2001. But, with the numerous special Legislative appropriations and 12 years of Legislative appropriations

for inflation proofing, the Legislature has nearly tripled Fund principal over that funded by the Constitutional dedication of revenue.

The Permanent Fund Corporation Board of Trustees proposal contained in SJR 13 and HJR 15 would repeal existing Legislative authority to appropriate Permanent Fund income established 25 years ago. With the State's Constitutional Budget Reserve Fund approaching "empty" and increased national/state concern with internal security matters, does this Legislature really want to repeal the existing authority to use all Permanent Fund earnings for what ever purpose this, or any future Legislature, determines to be the best public use at the time?

If the existing flexibility to appropriate earnings is to be changed, I would suggest that discussion and resolution of the part Permanent Fund earnings/payout are to play in the annual State budget should run concurrently with deliberation of the Trustees' proposed amendment to imbed inflation proofing of the Permanent Fund in the Constitution. If the 2002 Legislative Session is not the time for deliberation and resolution of the statutory use of all Permanent Fund earnings/payout, consideration of the Trustee's amendment should be postponed to a time when all Permanent Fund earnings/payout can be allocated by statute. The existing statutory system of annual appropriations for, "the amount calculated under AS 37.13.145 to offset the effect of inflation on the principal of the Alaska permanent fund" has done the job well, and can continue to do so.

Thank you very much for providing this opportunity to appear before the Senate State Affairs Committee.

Jay Hogan
PO Box 21073
Juneau, Alaska 99802

ORIGINAL SENATE
FILE NO. 0045

ENGROSSED

ENROLLED ACT NO. 41, SENATE

FIFTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2002 SPECIAL SESSION

AN ACT relating to investment of state funds; modifying spending policy amounts from investments of permanent Wyoming mineral trust funds and the common school account within the permanent land fund; repealing a separate inflation proofing provision for the common school account within the permanent land fund; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 9-4-305(b) and 9-4-713(c), (d)(ii), (iii), (g), (h)(ii) and (iii) are amended to read:

9-4-305. Disposition of public land revenue.

(b) Proceeds from the sale of the public lands, mineral royalties and any money designated by the Wyoming constitution or Wyoming statutes as collected shall be transmitted to the state treasurer and credited to the proper accounts within the permanent land fund, except as provided by article 7, section 2 of the Wyoming constitution, thirty-three and one-third percent (33 1/3%) of the mineral royalties received from the lease of any school lands but not to exceed eight million dollars (\$8,000,000.00) during any one (1) year, shall be deposited into the public school capital construction account within the earmarked revenue fund. To the extent constitutionally permissible and notwithstanding any other provision of law, at the end of every fiscal year, the state treasurer shall transfer to the corpus of each account within the permanent land fund, except the common school account, from the income earned on the corresponding account within the permanent land fund, to the extent available, an amount as provided by this subsection. In determining the amount to be withheld, the state treasurer shall calculate the fiscal

ORIGINAL SENATE
FILE NO. 0045

ENROLLED ACT NO. 41, SENATE

FIFTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2002 SPECIAL SESSION

year beginning balance and ignore any appropriations made from the account within that fiscal year. For the fiscal year 2000, he shall transfer an amount equal to five percent (5%) of the inflation rate for the previous twelve (12) month period as determined by the department of administration and information multiplied by the beginning balance of each permanent land fund account, except the common school account. At the end of each succeeding fiscal year, the state treasurer shall increase the amount to be multiplied by that year's inflation rate by five percent (5%) until such time as the multiplier reaches one hundred percent (100%) of the inflation rate, and then multiply that amount by the beginning balance of each permanent land fund account, except the common school account.

9-4-713. Investment earnings spending policy - permanent funds.

(c) The earnings from the permanent Wyoming mineral trust fund under W.S. 9-4-204(n) during each ~~of the fiscal years~~ year beginning ~~July 1, 2000, and July 1, 2001,~~ in excess of the spending policy established in subsection (d) of this section are appropriated from the general fund to the permanent Wyoming mineral trust fund reserve account. The appropriation shall be credited to the fund as soon as practicable after the end of the fiscal year but no later than ninety (90) days after the end of the fiscal year.

(d) The annual spending policy for the permanent Wyoming mineral trust fund is as follows for the fiscal year (FY) specified:

(ii) FY 2002 - ~~One hundred twenty three million dollars (\$123,000,000.00)~~ an amount equal to eight percent (8%) of the previous five (5) year average market value of

ORIGINAL SENATE
FILE NO. 0045

ENROLLED ACT NO. 41, SENATE

FIFTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2002 SPECIAL SESSION

the trust fund, calculated from the first day of the fiscal year;

(iii) FY 2003 and each fiscal year thereafter - One hundred twenty four million dollars (\$124,000,000.00); the amount specified in paragraph (ii) of this subsection shall be reduced by three hundred seventy-five thousandths percent (.375%) increments each fiscal year until the amount equals five percent (5%) of the previous five (5) year average market value of the trust fund, calculated from the first day of fiscal year for the fiscal year 2010 and for each fiscal year thereafter.

(g) There is annually appropriated from the general fund to the common school permanent fund reserve account an amount determined under this subsection. The amount shall be computed and calculated by the state treasurer. The amount shall be equal to the extent to which earnings from the common school account within the permanent land fund under W.S. 9-4-204(k) exceed the spending policy established in subsection (h) of this section for that fiscal year. ~~For purposes of calculating earnings from the common school account within the permanent land fund under this subsection, earnings transferred to the corpus of the common school account pursuant to W.S. 9-4-305(b) shall not be included. Earnings transferred to the common school account under W.S. 9-4-305(b) shall not be included when determining spending policy under subsection (h) of this section.~~ The appropriation shall be credited to the account as soon as practicable after the end of the fiscal year but no later than ninety (90) days after the end of the fiscal year.

(h) The annual spending policy for the common school account within the permanent land fund is as follows for the fiscal year (FY) specified:

ORIGINAL SENATE
FILE NO. 0045

ENROLLED ACT NO. 41, SENATE

FIFTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2002 SPECIAL SESSION

(ii) ~~FY 2002 - Sixty eight million dollars~~
~~(\$68,000,000.00)~~ An amount equal to eight and two-tenths
percent (8.2%) of the previous five (5) year average market
value of the account, calculated from the first day of the
fiscal year;

(iii) ~~FY 2003 and each fiscal year thereafter -~~
~~Seventy two million dollars (\$72,000,000.00);~~ the amount
specified in paragraph (ii) of this subsection shall be
reduced by three hundred seventy-five thousandths percent
(.375%) increments each fiscal year until the amount equals
five percent (5%) of the previous five (5) year average
market value of the account, calculated from the first day
of fiscal year for the fiscal year 2011 and for each fiscal
year thereafter.

Section 2. W.S. 9-4-713(d) (i) and (iv) and (h) (i) and
(iv) is repealed.

ORIGINAL SENATE
FILE NO. 0045

ENROLLED ACT NO. 41, SENATE

FIFTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2002 SPECIAL SESSION

Section 3. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____
DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk

INVESTMENT ACCOUNT BALANCES
As Of June 30, 2001

<u>FUND/ACCOUNT NAME</u>	<u>CASH & RECEIVABLES</u>	<u>INVESTMENTS</u>	<u>NET DISC/PERM PURCHASED</u>	<u>ACCOUNT BALANCE (Corpus)</u>
Miner's Hospital	\$22,991,625.14			\$22,991,625.14
Public Buildings At Capitol	75,405.45			75,405.45
Fish Hatchery	218,235.96			218,235.96
Common School	165,166,812.69 *	\$760,379,527.04 ***		925,546,339.73
Common School II	5,000,000.00			5,000,000.00
D.D. & B. Asylum	671,097.20			671,097.20
Carey Act	335,130.33			335,130.33
Omnibus	1,506,753.39			1,506,753.39
State Hospital	986,726.80			986,726.80
State Training School	301,044.60			301,044.60
Penitentiary	658,754.46			658,754.46
Agricultural College	5,489,106.54			5,489,106.54
University	13,671,032.56			13,671,032.56
Subtotal-Permanent Land Fund	217,071,725.12	760,379,527.04		977,451,252.16
Mineral Trust Fund	282,423,892.59	1,557,268,027.92 ***	(\$26,195.73)	1,839,665,724.78
Tobacco Settlement Fund	973,071.85	33,995,548.79		34,968,620.64
Subtotal-All Permanent Funds	500,468,689.56	2,351,643,103.75	(26,195.73)	2,852,085,597.58
Worker's Compensation	71,107,981.29	284,262,140.15 ***		355,370,121.44
Water Development	90,599,797.02 **	65,587,938.54 ***		156,187,735.56
TOTAL	\$662,176,467.87	\$2,701,493,182.44	(\$26,195.73)	\$3,363,643,454.58

* Does not include debt service deposit (\$57,984,859.00).

** Includes loans receivable.

*** All or a portion of these funds are now invested by Investment Managers, rather than directly invested by the State Treasurer.

"Cash and Receivables" is actually included with, and part of, the State Agency Pool investments. This investment Pool represents the cash balance of all funds and accounts for which specific investments have not been made. The State Agency Pool investments are not summarized in this report.

SJR

22

ALASKA STATE LEGISLATURE

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



State Capitol
Juneau, AK 99801-1182
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Senate Judiciary Committee

SPONSOR STATEMENT

SJR 22
(4/4/01)

SJR 22 proposes an amendment to the Constitution of the State of Alaska changing the length of time between retention elections for supreme court justices and superior court judges. It is designed to increase public involvement in the judicial retention process and to increase the judicial branch's accountability to Alaskans.

Currently, each superior court judge and supreme court justice 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, supreme court justices are up for approval or rejection only every tenth year and superior court judges only every sixth year. SJR 22 changes both these intervals to six years for supreme court justices and four years for superior court judges.

Alaskans need more frequent opportunities to assess the performance of those who serve us in the judicial branch of government. Unfortunately, our courts are currently failing to make all decisions in a timely manner. There is one court decision that has been pending in the supreme court for more than three years. Information like this is critical to ensure public accountability of our judicial officers. Having retention elections more frequently will help ensure that the public is basing their decisions on the most timely information.

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 so far apart. By allowing Alaskans to evaluate supreme court justices every six years and superior court judges every four years, we will ensure increased public accountability and better job performance.

DD/kk



American Bar Association
Judicial Administration Division



Standards of Judicial Administration
Volume III

STANDARDS
RELATING TO
APPELLATE
COURTS

STR 22

1994 EDITION



STANDARDS RELATING TO APPELLATE COURTS



766 5628

Section 3.52 Standards of Timely Disposition of Appellate Cases.

(a) Purpose. Time standards should be used as an administrative goal to assist in achieving caseload management that is efficient, productive, and produces quality results. Cases vary in complexity of legal issues and length of record, and no single fixed time standard is appropriate for each appeal. To measure the efficiency of an appellate court in processing its entire caseload, courts are encouraged to adopt standards which provide that, for any given period, a percentage of appeals complete each appellate function within a certain number of days. Some cases, however, are unique so that it is impracticable to set a goal for a particular time within which they should be resolved. Courts are encouraged to give the reference models set forth in subdivisions (c) and (d) herein and Sections 3.53, 3.54, and 3.55 serious consideration when formulating time standards for their particular court.

(b) Overall Time Standards. Timely disposition of appeals is a cooperative effort among those responsible for the administrative, lawyer, and judicial functions in a court system. See Sections 3.53, 3.54, and 3.55. Time standards should be developed by each court after appropriate involvement of, and consultation with, those whose work they monitor. These goals are not intended to become rules for appellate courts. Rather, their purpose is to establish a framework for periodic reassessment and constant betterment of goals which the court commits itself to achieve. States can adopt a variety of rules and procedures that will be designed to achieve these goals. The function of time standards is to establish a method for assessing whether those rules and procedures are successful.

(c) Reference Model: Time Standards for Supreme Courts.

(i) 50% of all cases should be resolved within 290 days from the time of the petition for certiorari from the intermediate court of appeals or from filing of the notice of appeal.

(ii) 90% of all cases should be resolved within one year of the petition for certiorari from the intermediate court of appeal or from filing of the notice of appeal.

(iii) The remaining ten percent should be resolved as expeditiously as possible, given the length of the record, the complexity of the issues, or other unusual circumstances.

For Refer

Not to be taken from

ANCHORAGE LAW LIBRARY

Appellate court should
time for the filing of
showing, and, when
have the discretion

court should exercise
cess and should con-
g procedures, prear-
es, and other devices
a time standards for

mission of appellate
those currently set un-
dure. If the transcript
to Section 3.53, the
efs should start from
ments is filed but no
tice of appeal.

in a timely fashion is
l. In meeting this ob-
assist in the enforce-
programs designed to
n of time cannot be
a. The lawyer should
is to be dismissed or

ferences have been
. Although their effect
ertain, lawyers should
entation with and use
may be used to explore
n appeal, and discuss
the appellate process.
necessitate the tolling
n all other cases, the
er to grant, deny, or

shorten the time standard for submission of briefs. An extension of time for the submission of briefs should be given only for good cause. Shorter briefing times should be considered for accelerated review and review of nonfinal orders.

References

American Bar Association, Judicial Administration Division, *Standards Relating to Appellate Delay Reduction* (1988).

Joy A. Chapper, National Center for State Courts, *Intermediate Appellate Courts, Improving Case Processing: Final Report* (1990).

Judith Resnick, "Managerial Judges," 96 *Harv. L. Rev.* 374 (1982).

Superior Court of New Jersey, Appellate Division, *Manual of Procedure for the Civil Appeals Settlement Program* (1991).

Section 3.55 Time Standards for Judicial Functions.

(a) Regular Review.

(i) Oral Argument. A case should be set on the oral argument calendar within 55 days of filing of the appellee's brief.

(ii) Without Oral Argument. If the case is to be submitted to a panel or a court *en banc* without argument, it should be submitted to the panel or the assigned judge within 35 days of the filing of appellee's brief.

(iii) Opinion Preparation. Opinions should be prepared within 55 days from the date of oral argument or the date of assignment. Opinions in death penalty cases and cases of extraordinary complexity should be prepared within 90 days from the date of oral argument or date of assignment and preparation time should be specially monitored by the chief judge.

(iv) Voting on Circulating Opinions. Opinions should be circulated to all judges simultaneously. All written dissents should be filed within 30 days of receipt of the opinion. Judges on the state's highest court not filing a written dissent should indicate their vote within 20 days of receipt of an opinion. Judges on

intermediate appellate courts not filing a written dissent should indicate their vote within 15 days of receipt of an opinion.

(v) Prerelease Processing. The total time outside the prescribed time periods in this section for processing an opinion for final release should not exceed 20 days. This includes the time necessary to address a dissent.

(b) Accelerated Review or Review of Nonfinal Orders. Opinions for the states' highest courts should be prepared within 30 days from the date of oral argument or the date of assignment. Opinions for intermediate courts of appeal should be prepared within 15 days from the date of oral argument or the date of assignment.

(c) Memorandum Opinions. Irrespective of the type of review, memorandum opinions should be prepared within 30 days of oral argument or date of assignment.

Commentary

Judicial decision-making is the final step in the appellate process. The time standards for this function involve a number of inter-related phases. Various alternatives are available in each phase to help reduce the time required to complete the required tasks. The appellate court should be flexible in choosing these alternatives based upon the nature of the case and the capabilities of the court and its personnel.

Effective use of central staff attorneys can promote cooperative efforts and relieve the judges of duties not central to the collegial responsibility of deciding an appellate case. See Section 3.62. Central staff attorneys can be responsible for the initial screening of cases to assist in determining whether there is a question of the existence of appellate jurisdiction, determining whether oral argument should be dispensed with, and deciding upon the form of the opinion. The central staff attorney may be delegated the duty of coordinating and conducting preargument conferences. Finally, central staff attorneys may also be used to coordinate the circulation of opinions, prepare summaries where appropriate, and oversee the operation of case assignment procedures.

After briefs are received, the court must decide how the case is to be presented. The two mechanisms normally available are oral



alaska judicial council

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ATTORNEY MEMBERS
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Robert B. Groseclose
Robert H. Wagstaff

CHAIR, EX OFFICIO
Dana Fabe
Chief Justice
Supreme Court

Facsimile Transmittal

To: Senate Finance Committee - See Below
Stephanie Cole & Chris Christensen

Fax #: See Below

Date: 4/3/01

Time: 9:50

From: Bill Cotton

Number of pages (including this cover sheet) 5

If you have any problems or questions, please contact Bill Cotton
at (907) 279-2526.

Comments:

Robin Taylor 465-3922, Dave Donley 465-6595, Johnny Ellis 465-2529, John Cowdery 465-2069,
Gene Therriault 465-3884, Stephanie Cole 264-0881, Chris Christensen 264-8291



alaska judicial council

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Dana Fabe
Chief Justice
Supreme Court

MEMORANDUM

TO: Senate Finance Committee

CC: Stephanie Cole, Administrative Director
Chris Christensen, Staff Counsel

FROM: William T. Cotton, Executive Director

DATE: April 3, 2001

RE: Judges with significant private and public law backgrounds

The Committee requested information on the number of judges with significant private and public law backgrounds (more than a year). A list of judges with the relevant information is attached.

I note that it is not the case that the great majority of judges have only a public law background. Over two-thirds of judges (40 of 58) have significant private practice experience.

I re-emphasize that the Council believes that SJR22 will make it harder for the Council to attract these highly qualified attorneys from private practice.

Type of Prior Experience for Sitting Judges			
Level/Judge Name	Mostly Public	Mostly Private	Significant Both
Carpenceti, Walter			X
Bryner, Alex	X		
Eastaugh, Robert L.		X	
Fabe, Dana	X		
Matthews, Warren		X	
Supreme Total	2	2	1
Appellate			
Mannheimer, David	X		
Stewart, David C.			X
Coats, Robert			X
Appellate Total	1	0	2
Superior			
Andrews, Elaine M.	X		
Brown, Harold M.			X
Beistline, Ralph R.		X	
Card, Larry D.			X
Collins, Patricia A.			X
Curda, Dale O			X
Cutler, Bev	X		
Erllich, Richard		X	X
Esch, Ben			X
Gonzalez, Rene J.			X
Gleason, Sharon		X	
Greene, Mary E.	X		

Hensley, Dan A.			X
Hopwood, Donald D			X
Joannides, Stephanie			X
Jeffery, Michael	X		
Link, Jonathan			X
Michalski, Peter A	X		
Pengilly, Charles	X		
Recse, John			X
Rindner, Mark			X
Sanders, Eric			X
Savell, Richard D.			X
Smith, Eric			X
Steinkruger, Niesje J.			X
Stephens, Trevor			X
Tan, Sen K.	X		
Thompson, Michael A.			X
Torrisi, Fred			X
Weeks, Larry R.			X
Wolverton, Michael	X		
Zervos, Larry C			X
Superior Total	8	3	22
District			
Adams, Sam	X		
Ashman, Peter G.			X
Bolger, Joel H.			X
Finn, Natalie	X		
Froehlich, Peter	X		

Funk, Raymond	X		
Kauvar, Jane	X		
Lohff, John R.			X
Lombardi, Suzanne			X
Nolan, Nancy			X
Miller, Kevin	X		
Motyka, Gregory J.			X
Murphy, Sig		X	
Neville	X		
Rhoades, Stephanie			X
Wanamaker, James N.			X
Wood, Mark I.			X
District Total	7	1	9
Total	18	6	34

**GENERAL INFORMATION REGARDING
THE SELECTION, RETENTION AND
TERMS OF OFFICE FOR JUDGES**

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18	Sponsor Statement – SJR 15 (1999) – A Constitutional Amendment providing four year terms for judges and that Judicial Appointments be confirmed by the Legislature Judges
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Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

State Capitol
Juneau, AK 99801
Phone: 907-465-3991
Fax: 907-465-3908

January 30, 2001

Memorandum

TO: Senator Dave Donley

FROM: Cherie Nienhuis^{CN}
Legislative Analyst

RE: Judicial Selection in Other States
Legislative Research Request 01.104

You asked for information on how other states select their judges; specifically if judges are appointed or elected, and if they are appointed, whether they must be confirmed and by whom.

I have attached Legislative Research Report 98.047, "Judicial Appointments," which explains judicial appointments and contains a very useful table on how other states select their judges. In addition, I have photocopied Table 4.4, "Selection and Retention of Judges," from The Council of State Government's, *The Book of the States, 2000-01*, which should provide updated information. Those states with laws that require consent of appointments from any entity have been highlighted.

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

Legislative Research Report 98.047
March 3, 1998

Judicial Appointments

Legislative Research Services
Division of Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature

Prepared by Patricia Young, Legislative Analyst



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www.legis.state.ak.us/fogro/fogros.htm*

JUDICIAL APPOINTMENTS

You wished to know the procedure by which judges are appointed to fill vacancies in the Alaska Court System. You were particularly interested in knowing with whom the authority for making such appointments resides.

In Alaska, only the governor has the authority to make permanent judicial appointments. Article IV, Section 5, of the Alaska Constitution specifies that the governor will choose and appoint justices to the supreme court and judges to the superior court from a list of nominees submitted by the Alaska Judicial Council.¹ Although the constitution does not require it, the legislature has provided that judgeships in the court of appeals and district court be filled in the same manner.² Following their appointments, justices and judges are subject to periodic retention elections.

The chief justice—who is selected by majority vote of the supreme court justices from among themselves—has the power to appoint a retired judge to serve *pro tempore* (or *pro tem*, i.e., temporarily) as a justice or judge in any court of the state.³ Such *pro tempore* appointments may be made for one or more court cases or for up to two years, except that a *pro tempore* judge or justice may complete a trial or appeal that is in progress at the conclusion of the appointment. Appointments may also be renewed.

The chief justice also has the power to assign judges from one court or division to another for temporary service.⁴ Additionally, the chief justice selects—with the approval of the supreme court—an administrative director who may, with the permission of the chief justice, assign sitting judges to serve in judicial districts outside their own when the courts are in need of assistance and the judges consent to the assignments.⁵ A single temporary assignment of a judicial officer to another judicial district may not exceed 90 days, unless the judicial officer consents to the additional assignment. Assignments in excess of 90 days or any assignment to which a judicial officer has not consented may be made only by special order of the chief justice.⁶

The following table shows the method states predominantly use when selecting and appointing judges and justices. I hope this information is helpful. Please let me know if you have questions or need further information.

¹ States use a variety of methods to select judges, depending on the court; however, the most commonly used selection process involves nomination of qualified candidates by a special, nonpartisan nominating body (usually composed of both attorneys and nonattorneys); appointment by the governor; and periodic voting by the electorate in regard to judges' retention of office. According to the Council of State Government's *Book of the States, 1986-87*, nineteen states (including Alaska) and the District of Columbia use this type of selection process, which is generally known as a merit or commission system. Nine states select judges by partisan elections; another 13 by nonpartisan elections. The legislature is involved, to some degree, in the selection of judges in eight of the remaining nine states.

² Alaska Statute 22.07.070 (vacancies in the court of appeals) and AS 22.15.170 (selection of district judges and magistrates). The presiding judge of the superior court in each judicial district appoints magistrates, who serve a judicial function at the local level. The presiding judge also may appoint persons to act for up to one year in the capacity of district judges, as needed.

³ Alaska State Constitution, Article IV, Section 11, allows for "special assignments [of retired judges and justices] as provided by court rule." Alaska Rules of Court, Administrative Rule 23, provides for the chief justice, or another justice designated by the chief justice, to appoint, by special assignment, retired justices and judges to sit *pro tempore*.

⁴ Alaska State Constitution, Article IV, Section 18 (court administration).

⁵ Alaska State Constitution, Article VI, Section 16, provides that the chief justice shall appoint an administrator. Alaska Rules of Court, Administrative Rule 1, enumerates the duties of the administrative director of the courts.

⁶ Alaska Rules of Court, Administrative Rule 24 (f) (length of assignment).

**Table 1: Judicial Selection—Predominant Selection Method
Intermediate Appellate Court and Court of Last Resort**

	Partisan Election	Nonpartisan Election	Selection Commission	Elected or Appointed by Legislature	Other
	Alabama	Georgia	Alaska	Connecticut (b)	California (f)
	Arkansas	Idaho	Arizona	Rhode Island (c)	Maine (g)
	Illinois	Kentucky	Colorado	South Carolina (d)	New Hampshire (h)
	Mississippi	Louisiana	Delaware	Virginia (e)	New Jersey (a)
	North Carolina	Michigan	Florida		New York (i)
	Pennsylvania	Minnesota	Hawaii (a)		
	Tennessee	Montana	Indiana		
	Texas	Nevada	Iowa		
	West Virginia	North Dakota	Kansas		
		Ohio	Maryland (a)		
		Oregon	Massachusetts		
		Washington	Missouri		
		Wisconsin	Nebraska		
			New Mexico		
			Oklahoma		
			South Dakota		
			Utah		
			Vermont (a)		
			Wyoming		
			District of Columbia (e)		

NOTES:

Many states use a variety of methods for selecting judges. We have attempted to place each state in the category that describes its most predominant practice for selecting intermediate appellate court and court of last resort judges. For more detail, see Table 4.4, "Selection and Retention of Judges," Council of State Governments, *Book of the States, 1996-97*. States in which governors appoint judges from among nominees submitted by an impartial body that screens applicants have been categorized under "Selection Commission."

(a) Appointments made with advice and consent of the senate.

(b) Appointments made by the legislature from nominations submitted by governor exclusively from candidates submitted by the selection commission.

(c) Supreme court justices elected by legislature; superior, district, and family court judges appointed by governor with advice and consent of senate.

(d) Supreme court, court of appeals, circuit court, and family court judges elected by legislature from names submitted on a nonpartisan basis by judiciary committee of legislature. Probate judges elected on partisan ballot. Magistrates are appointed by governor with advice and consent of senate.

(e) Elected by majority vote of the legislature.

(f) Supreme court and courts of appeal judges appointed by governor and confirmed by commission on judicial appointments.

(g) Appointments made by governor with advice and consent of senate; no nominating commission.

(h) Appointments made by governor and confirmed by majority vote of elected five-member executive council; no nominating commission.

(i) Court of appeals judges appointed by governor with advice and consent of senate; no nominating commission. Others elected on partisan ballot.

SOURCE:

Council of State Governments, *The Book of the States, 1996-97*.

MEMO

TO: DD
FROM: JOMO

AVERAGE TERM FOR ELECTED JUDGES

STATE	SUPERIOR	APPELLATE	SUPREME
Alabama	6	6	6
Arkansas	?	8	8
California	?	12	12
Florida	?	?	?
Georgia	4	6	6
Idaho	?	?	6
Illinois	?	?	?
Kentucky	?	?	?
Louisiana	?	?	?
Maryland	15	?	15
Michigan	?	?	8
Minnesota	6	6	6
Mississippi	?	?	8
Montana	?	?	?
Nevada	?	?	6
New Mexico	8	8	8
North Carolina	8	8	8
North Dakota	?	?	10
Ohio	?	6	6
Oklahoma	?	?	?
Oregon	6	6	6
Pennsylvania	?	?	?
Texas	?	?	6
Washington	?	?	6
West Virginia	?	?	12
Wisconsin	?	?	10
	53	66	153
average from data:	9	7	8
average without outliers	6	7	8

Table 4.1
STATE COURTS OF LAST RESORT

State or other jurisdiction	Name of court	Justices chosen by			Term (in years) (c)	Chief justice	
		At large	By district	No. of judges (b)		Method of selection	Term of service as chief justice
Alabama	S.C.	*		9 (d)	6	Popular election	6 years
Alaska	S.C.	*		5	10	By court	3 years (e)
Arizona	S.C.	*		5	6	By court	5 years
Arkansas	S.C.	*		7	8	Popular election	8 years
California	S.C.	*		7	12	Appointed by governor	12 years
Colorado	S.C.	*		7	10	By court	Indefinite
Connecticut	S.C.	*		7 (f)	8	Legislative appointment (g)	8 years
Delaware	S.C.	*		5	12	Appointed by governor	12 years
Florida	S.C.	(h)		7	6	By court	2 years
Georgia	S.C.	*		7	6	By court	4 years
Hawaii	S.C.	*		5	10	Appointed by governor, with consent of Senate (i)	10 years
Idaho	S.C.	*		5	6	By court	4 years
Illinois	S.C.		*	7	10	By court	3 years
Indiana	S.C.	*		5	10 (j)	Judicial nominating commission appointment	5 years
Iowa	S.C.	*		9	8	By court	8 years or duration of term
Kansas	S.C.	*		7	6	Rotation by seniority	Indefinite
Kentucky	S.C.		*	7	8	By court	4 years
Louisiana	S.C.		*	8 (k)	10	By seniority of service	Duration of service
Maine	S.J.C.	*		7	7	Appointed by governor	7 years
Maryland	C.A.		*	7	10	Appointed by governor	Indefinite
Massachusetts	S.J.C.	*		7 (l)	To age 70	Appointed by governor (m)	To age 70
Michigan	S.C.	*		7	8	By court	2 years
Minnesota	S.C.	*		7	6	Popular election	6 years
Mississippi	S.C.		*	9 (n)	8	By seniority of service	Duration of service
Missouri	S.C.	*		7	12	By court (o)	2 years
Montana	S.C.	*		7	8	Popular election	8 years
Nebraska	S.C.		*(p)	7	6 (q)	Appointed by governor from Judicial Nominating Commission	Duration of service
Nevada	S.C.	*		5	6	Rotation	2 years
New Hampshire	S.C.	*		5	To age 70	Appointed by governor with approval of elected executive council	To age 70
New Jersey	S.C.	*		7	7 (r)	Appointed by governor, with consent of Senate	Duration of service
New Mexico	S.C.	*		5 (s)	8	By court	2 years
New York	C.A.	*		7	14	Appointed by governor from Judicial Nomination Commission	14 years
North Carolina	S.C.	*		7	8	Popular election	8 years
North Dakota	S.C.	*		5	10	By Supreme and district court judges	5 years (t)
Ohio	S.C.	*		7	6	Popular election	6 years
Oklahoma	S.C.		*	9	6	By court	2 years
	C.C.A.		*	5	6	By court	2 years
Oregon	S.C.	*		7	6	By court	6 years
Pennsylvania	S.C.	*		7	10	Rotation by seniority	Duration of term
Rhode Island	S.C.	*		5	Life	Appointed by governor from Judicial Nominating Commission	Life
South Carolina	S.C.	*		5	10	Legislative election	10 years
South Dakota	S.C.		*(u)	5	8	By court	4 years
Tennessee	S.C.	*		5	8	By court	4 years
Texas	S.C.	*		9	6	Partisan election	6 years
	C.C.A.	*		9	6	Partisan election	6 years (v)
Utah	S.C.	*		5	10 (w)	By court	4 years
Vermont	S.C.	*		5	6	Appointed by governor from Judicial Nomination Commission, with consent of Senate	6 years
Virginia	S.C.	*		7	12	Seniority	Indefinite
Washington	S.C.	*		9	6	By court	4 years
West Virginia	S.C.A.		*	5	12	Rotation by seniority	1 year
Wisconsin	S.C.	*		7	10	Seniority	Until declined
Wyoming	S.C.	*		5	8	By court	At the pleasure of the court
Dist. of Columbia	C.A.	*		9	15	Judicial Nominating Commission appointment	4 years
American Samoa	H.C.	*		8 (x)	(y)	Appointed by Secretary of the Interior	(w)
Puerto Rico	S.C.	*		7	To age 70	Appointed by Governor, with consent of Senate	To age 70

Sources: Court Statistics Project, *State Court Caseload Statistics, 1998* (National Center for State Courts 1999) and *State Court Organization 1998*; state constitutions, statutes and court administration offices.

- Key:
 S.C. — Supreme Court
 S.C.A. — Supreme Court of Appeals
 S.J.C. — Supreme Judicial Court
 C.A. — Court of Appeals
 C.C.A. — Court of Criminal Appeals
 H.C. — High Court
 (a) See Table 4.4, "Selection and Retention of Judges," for details.
 (b) Number includes chief justice.
 (c) The initial term may be shorter. See Table 4.4, "Selection and Retention of Judges," for details.
 (d) 9 justices sit in panels of 5 or en banc.
 (e) A justice may serve more than one term as chief justice, but may not serve consecutive terms in that position.
 (f) 7 justices sit in panels of 5 (membership rotates daily); upon order of chief justice, 6 or 7 may sit on panel.
 (g) Governor nominates from candidates submitted by Judicial Selection Commission.
 (h) Regional (5), Statewide (2), Regional based on District of Appeal.
 (i) Judicial Selection Commission nominates.

- (j) Initial two years; retention 10 years.
 (k) Includes one assigned from courts of appeal.
 (l) 7 justices sit on the court, and 5 justices sit en banc.
 (m) Chief Justices are appointed, until age 70, by the Governor with the advice and consent of the Executive (Governor's) Council.
 (n) 9 justices sit in panels of 1 and en banc.
 (o) Selection is typically rotated among the judges.
 (p) Chief justice chosen statewide; associate judges chosen by district.
 (q) More than three years for first election and every six years thereafter.
 (r) Followed by tenure.
 (s) 5 justices sit in panels of 3.
 (t) Or expiration of term, whichever is first.
 (u) Initially chosen by district; retention determined statewide.
 (v) Presiding judge of Court of Criminal Appeals.
 (w) Initial three years; retention 10 years.
 (x) Chief judges and associate judges sit on appellate and trial divisions.
 (y) For good behavior.

Table 4.2 7/10/00
STATE INTERMEDIATE APPELLATE COURTS AND GENERAL TRIAL COURTS.
NUMBER OF JUDGES AND TERMS

State or other jurisdiction	Intermediate appellate court			General trial court		
	Name of court	No. of judges	Term (years)	Name of court	No. of judges	Term (years)
Alabama	Court of Criminal Appeals	5	6	Circuit Court	131	6
	Court of Civil Appeals	5	8			
Alaska	Court of Appeals	3	8	Superior Court	40 (a)	6
Arizona	Court of Appeals	22	8	Superior Court	136 (i)	4
Arkansas	Court of Appeals	12	8	Chancery/Probate Court and Circuit Court	106 (b)	(b)
California	Court of Appeals	93	12	Superior Court	1,012 (c)	6
Colorado	Court of Appeals	16	8	District Court	154 (d)	6
Connecticut	Appellate Court	9	8	Superior Court	167	8
Delaware	...	...	...	Superior Court	17	12
				Court of Chancery	(e)	12
Florida	District Courts of Appeals	61	8	Circuit Court	468	6
Georgia	Court of Appeals	10	6	Superior Court	175	4
Hawaii	Intermediate Court of Appeals	4	10	Circuit Court	27 (f)	10
Idaho	Court of Appeals	3	8	District Court	37 (g)	4
Illinois	Appellate Court	42 (h)	10	Circuit Court	497 (i)	6 (j)
Indiana	Court of Appeals	15 (k)	10 (l)	Superior Court, Probate Court and Circuit Court	279	6
Iowa	Court of Appeals	6	6	District Court	328 (m)	6
Kansas	Court of Appeals	10	4	District Court	156 (n)	4
Kentucky	Court of Appeals	14	8	Circuit Court	108	8
Louisiana	Court of Appeals	54	10	District Court	222 (o)	6
Maine	...	...	...	Superior Court	18	7
Maryland	Court of Special Appeals	13	10	Circuit Court	140	15
Massachusetts	Appeals Court	14	(p)	Superior Court	80	(p)
Michigan	Court of Appeals	28	6	Circuit Court	210	6
Minnesota	Court of Appeals	16	6	District Court	254	6
Mississippi	Court of Appeals	10	8	Circuit Court	49	4
Missouri	Court of Appeals	32	12	Circuit Court	135(q)	6
Montana	...	...	...	District Court	37 (r)	6
Nebraska	Court of Appeals	6	8 (s)	District Court	53	8 (t)
Nevada	...	...	...	District Court	51	6
New Hampshire	...	...	...	Superior Court	28(u)	(u)
New Jersey	Appellate Division of Superior Court	32	7 (v)	Superior Court	384(w)	7 (x)
New Mexico	Court of Appeals	10	8	District Court	72	8
New York	Appellate Division of Supreme Court	56	5 (y)	Supreme Court and County Court	496	(z)
	Appellate Terms of Supreme Court	15	5 (y)			
North Carolina	Court of Appeals	12	8	Superior Court	99(aa)	8
North Dakota	...	...	...	District Court	43	6
Ohio	Court of Appeals	68	6	Court of Common Pleas	372	6
Oklahoma	Court of Appeals	12	6	District Court	71 (bb)	4
Oregon	Court of Appeals	10	8	Circuit Court	160	6
				Tax Court	1	8
Pennsylvania	Superior Court	15	10	Court of Common Pleas	385	10
	Commonwealth Court	9	10			
Rhode Island	...	...	Life	Superior Court	22	Life
South Carolina	Court of Appeals	9	6	Circuit Court	46 (cc)	6
South Dakota	...	...	...	Circuit Court	37 (dd)	8
Tennessee	Court of Appeals	12	8	Chancery Court	33	8
	Court of Criminal Appeals	12	8	Circuit Court	85	8
				Criminal Court	31	8
				Probate Court	2	(ee)
Texas	Court of Appeals	80	6	District Court	396	4
Utah	Court of Appeals	7	10 (ff)	District Court	70 (gg)	6
Vermont	...	...	...	Superior Court and District Court	29 (hh)	6
Virginia	Court of Appeals	10	8	Circuit Court	148	8
Washington	Court of Appeals	21	8	Superior Court	167	4
West Virginia	...	...	...	Circuit Court	62	8
Wisconsin	Court of Appeals	16	6	Circuit Court	234	6
Wyoming	...	...	...	District Court	17	6
Dist. of Columbia	...	...	...	Superior Court	59	15
Puerto Rico	Circuit Court of Appeals	33	16	Court of First Instance	315	12

Sources: National Center for State Courts, State Court Caseload Statistics: Annual Report 1998 and State Court Organization 1998

Key:

... — Court does not exist in jurisdiction or not applicable.

(a) Plus eight masters.

(b) There are 30 circuit court judges who serve four-year terms. Chancery probate court, consists of 33 judges who serve six-year terms. (43 additional judges serve both circuit and chancery courts)

(c) Plus 205 commissioners.

(d) Plus 32 magistrates.

(e) One chancellor and four vice-chancellors.

(f) Plus 15 family judges.

(g) Plus 81 full-time magistrate/judges.

(h) Plus 10 supplemental judges.

(i) Plus 318 associate judges, and 50 permissive associate judges

(j) Associate judges 4 years

(k) Plus one tax court judge

(l) Two years initial, 10 years retention

(m) Includes 112 district judges, 54 district associate judges, 7 senior judges, 12 associate juvenile judges, 135 part-time magistrates, one associate probate judge, and 7 alternate district associate judges

(n) Plus 69 district magistrates.

(o) Plus eleven commissioners.

(p) To age 70

(q) Plus 175 associate circuit judges.

(r) Plus six judges for water court and one for workers' compensation court

(s) More than three years for first election and every six years thereafter

(t) The initial term is for 3 years but not more than 5 years

(u) Plus 11 full-time marital masters.

(v) Followed by tenure

(w) Plus 21 surrogates.

(x) On reappointment until age 70

(y) Of duration

(z) Fourteen years for Supreme Court, 10 years for county court

(aa) Plus 100 clerks with estate jurisdiction

(bb) Plus 77 associate judges and 73 special judges

(cc) Plus 21 masters-in-equity

(dd) Plus 8 law magistrates, 7 part-time law magistrates, 92 full-time clerk magistrates, and 58 part-time clerk magistrates

(ee) Locally determined

(ff) Three years initial, six years retention

(gg) Plus 7 domestic court commissioners

(hh) District and superior court judges also serve as family court judges

(i) Plus two part-time judges

Judging How Justices Are Chosen

By Lawrence W. Reed

Some legal observers contend it's time to change the way Michigan Supreme Court justices are selected. Is this a wise idea? Let's look at the current process and its results.

Candidates for the court are nominated by political parties at summer conventions, after which they officially run and appear on the ballot as "nonpartisan." When a vacancy occurs because of death or resignation, the governor appoints a replacement, who must face voters in the next general election.

Surveying just a handful of states reveals no uniform number of justices or a standard method of selection that would appear to have decisive advantages over the others. Michigan's court has seven justices; West Virginia, Tennessee, and Indiana are among the states that have only five on their highest court; the supreme court of Texas, like its federal counterpart, has nine.

At least one state, Tennessee, requires its high court to meet in multiple locations. Some states, but not all, require state senate confirmation of gubernatorial nominations to their supreme court. In some states, justices run as partisans from the very beginning; in others, they are nonpartisan throughout the process. Michigan's partisan/nonpartisan hybrid is somewhat unusual, but there is little evidence to suggest it has produced inferior justices.

In Maryland, members of the state's highest court are initially appointed by the governor and confirmed by the state senate. After that they run for office on their records, unopposed. If voters reject a judge's retention in office, the office becomes vacant and must be filled by a new appointee. The process may look nonpartisan because no political party officially nominates a justice, and competing court candidates don't go head-to-head in noisy elections, but governors almost always choose men and women who share their personal and political philosophies.

While the process of partisan nomination followed by nonpartisan campaigning may appear contradictory, "problems" with it are overblown. A party endorsement does not dictate how a justice may rule in any future case; rather, it is reflective of the fact that a jurist's track record and philosophy are generally compatible with a particular party's broad perspective. Requiring candidates to run on a party line in November may be more consistent, but it might also prompt too many voters to make their decisions based on party labels rather than the qualities and performance of the candidates. If voters have to dig a little bit to learn who's running and why, that's probably a healthy thing.

Proposals to make Michigan Supreme Court slots purely appointive—as they are at the federal level, subject to Senate confirmation for life terms—would do away with the messy electoral process altogether. But that reform would not necessarily guarantee high-quality, squeaky-clean justices immune to either cash or politics.

Moreover, periodically putting incumbents and wannabes before the voters gives citizens the opportunity to rectify appointive mistakes. Even though most voters spend appallingly little time learning much about who is on the ballot, Michigan citizens don't want to give up their right to vote on who serves on their highest court.

A few observers have occasionally argued that some form of "merit selection" is missing from Michigan's Supreme Court. They usually advocate

that the governor name justices only from a pre-approved list, which almost always means a list approved by the State Bar or some committee thereof. Supposedly, this would assure that we get the best and most qualified . . . but the legal community is not some angelic and dispassionate group of altruists. It is made up of its own elite and factions, each with its own agenda. Governors have some incentive to choose good people for spots on the court and if they fail, at least the voters under the current system can rectify their mistakes.

If the present system unduly politicizes the Court or forces candidates to compromise their integrity by grubbing for campaign money, one small reform could ameliorate that. It would be drawn from the so-called "Missouri system" and

would require that justices go before the voters in retention elections when their terms are up. By voting "yes" or "no" voters would decide whether to retain or remove a justice, but wouldn't choose between competing candidates on the ballot.

Fundamentally, however, the current process has not failed Michigan citizens. Rather, it has produced what is arguably the best state supreme court in the nation: a body of eminently qualified, experienced, and sensible jurists, the majority of whom believe in interpreting law, not manufacturing it from the bench. Let's be careful we don't "fix" what appears not to be broken.

Lawrence W. Reed is president of the Midland, Michigan-based Mackinac Center for Public Policy.

Surveying just a handful of states reveals no uniform number of justices or a standard method of selection that would appear to have decisive advantages over all the others.

Table 4.4
SELECTION AND RETENTION OF JUDGES

<i>State or other jurisdiction</i>	<i>How selected and retained</i>
Alabama	Appellate, circuit, district and probate judges elected on partisan ballots. Municipal court judges appointed by the governing body of the municipality (majority vote of its members).
Alaska	Supreme Court, court of appeals, superior court and district court judges appointed by governor from nominations submitted by Judicial Council. Supreme Court, court of appeals and superior court judges approved or rejected on nonpartisan retention ballot at first general election held more than three years after appointment. Reconfirmation every 10, eight and six years, respectively. District court judges approved or rejected at first general election held more than two years after appointment. Reconfirmation every four years. District court magistrates appointed by and serve at pleasure of presiding judge of superior court in each judicial district.
Arizona	Supreme Court justices and court of appeals judges appointed by governor from a list of not less than three nominees submitted by a nine-member Commission on Appellate Court Appointments. Superior court judges (in counties with population greater than 250,000) appointed by governor from a list of not less than three nominees submitted by a nine-member commission on trial court appointments. Judges initially hold office for term ending 60 days following next regular general election after expiration of two-year term. Judges who file declaration of intention to be retained in office run at next regular general election on nonpartisan retention ballot. Superior court judges in counties having population less than 250,000 elected on nonpartisan ballot; justices of the peace elected on partisan ballot; police judges and magistrates selected as provided by charter or ordinance; Tucson city magistrates appointed and reappointed by mayor and council from nominees submitted by nonpartisan Merit Selection Commission on magistrate appointments.
Arkansas	All elected on partisan ballot.
California	Supreme Court and courts of appeal judges appointed by governor, confirmed by Commission on Judicial Appointments. Judges run unopposed on nonpartisan retention ballot at next general election after appointment. Superior court judges elected on nonpartisan ballot with counties having the option to use selection method described above; judges elected to full term at next general election on nonpartisan ballot. Municipal court and justice court judges initially appointed by governor and county board of supervisors, respectively, retain office by election on non-partisan ballot.
Colorado	Supreme Court and court of appeals judges appointed by governor from nominees submitted by Supreme Court Nominating Commission. District judges appointed by governor from nominees submitted by Judicial District Nominating Commission. After initial appointive term of two years, judges run on nonpartisan retention ballot. Municipal judges appointed by municipal governing body. Denver County judges appointed by mayor from list submitted by nominating commission; judges run on nonpartisan retention ballot.
Connecticut	Judges of the Supreme Court, appellate court, and district court appointed by Legislature from nominations submitted by governor exclusively from candidates submitted by the Judicial Selection Commission. Judicial Review Council makes recommendations on nominations for reappointment. Probate judges elected on partisan ballots.
Delaware	All appointed by governor from list submitted by a judicial nominating commission (which is established by executive order) with consent of majority of Senate.
Florida	Supreme Court and district courts of appeal judges appointed by governor from nominees submitted by appropriate judicial nominating commission. Judges run for retention at next general election preceding expiration of term. Circuit and county court judges elected on nonpartisan ballots.
Georgia	Supreme Court, court of appeals, superior court, and state court judges elected on nonpartisan ballots. For the magistrate courts, the chief magistrate is selected in a partisan election; additional magistrates are appointed by the chief magistrate with the consent of the judges of the superior court. Probate judges and justices of peace elected on partisan ballots. Juvenile and municipal court judges appointed.
Hawaii	Supreme Court and intermediate court of appeals justices and circuit court judges nominated by Judicial Selection Commission (on list of four to six names) and appointed by governor with consent of Senate. Judges reappointed to subsequent terms by the Judicial Selection Commission. District court judges nominated by Commission (on list of at least six names) and appointed by chief justice.
Idaho	Supreme Court and court of appeals justices and district court judges elected on nonpartisan ballot. Magistrates appointed on nonpartisan merit basis by District Magistrates Commission and run for retention in first general election next succeeding the 18-month period following initial appointment; thereafter, run every four years.
Illinois	Supreme Court, appellate court and circuit court judges nominated at primary elections or by petition and elected at general or judicial elections on partisan ballot. Judges run in uncontested retention elections for subsequent terms. Circuit court associate judges are appointed by circuit judges for four-year terms.
Indiana	Supreme Court justices and court of appeals judges are appointed by governor from list of three nominees submitted by seven-member Judicial Nominating Commission. Judges serve until next general election after two years from appointment date; thereafter, run for retention on record. Circuit, superior and county judges in most counties run on partisan ballot. Circuit court judges in Vanderburgh County run on a nonpartisan ballot. Superior court judges in Allen County run on a nonpartisan ballot. The majority of superior court judges in Lake County, and all superior court judges in St. Joseph and Vanderburgh counties, are appointed by the governor upon recommendation of the Judicial Nominating Commission. Probate court and city court judges are selected by partisan elections.
Iowa	Supreme Court, court of appeals and district court judges appointed by governor from lists submitted by nominating commissions. Judges serve an initial one-year term until January 1 following next general election, then run on records for retention. Judicial magistrates appointed by county judicial magistrate appointing commission. District associate judges are appointed by the district judges of the judicial election district from persons nominated by the County Magistrate Appointing Commission, and stand for retention every four years thereafter.

See footnotes at end of table.

SELECTION AND RETENTION OF JUDGES — Continued

<i>State or other jurisdiction</i>	<i>How selected and retained</i>
Kansas	Supreme Court and court of appeals judges appointed by governor from nominations submitted by Supreme Court Nominating Commission. Judges serve until second Monday in January following first general election after one year in office; thereafter run on record for retention every six (Supreme Court) and four (court of appeals) years. District judges in 17 judicial districts are appointed by governor through nonpartisan commission plan. District judges in 14 judicial districts are elected on partisan ballot.
Kentucky	All judges elected on nonpartisan ballot.
Louisiana	All justices and judges elected on partisan basis, but state has open primary which requires all candidates to appear on a single ballot.
Maine	All appointed by governor with confirmation of the Senate, except probate judges who are elected on partisan ballot. Governor reappoints and Senate reconfirms for seven-year terms.
Maryland	Court of Appeals and court of special appeals judges nominated by judicial nominating commission, and appointed by governor with advice and consent of Senate. Judges run on record for retention at next general election after one year of service. Judges of circuit courts and Supreme Bench of Baltimore City nominated by commission and appointed by governor. Judges of circuit court run on nonpartisan ballot in first general election after year of service (may be challenged by other candidates). District court judges nominated by commission and appointed by governor, subject to Senate confirmation. Judges of the district court appointed by governor, with Senate confirmation. Judges of the orphans' court are selected in nonpartisan elections.
Massachusetts	All nominated and appointed by governor with advice and consent of Governor's Council. Judicial Nominating Commission, established by executive order, submits names on nonpartisan basis to governor.
Michigan	Nominated in party conventions, all except district court magistrates are elected on nonpartisan ballot at general election. District court magistrates appointed by district court judges, with approval of county board of commissioners.
Minnesota	All elected on nonpartisan ballot.
Mississippi	All elected on nonpartisan ballot, except municipal court judges who are appointed by governing authority of each municipality.
Missouri	Judges of Supreme Court, court of appeals and the circuit courts of Jackson, Clay, Platte, and St. Louis counties appointed initially by governor from nominations submitted by judicial selection commissions. Judges run for retention after one year in office. All other judges elected on partisan ballot.
Montana	All elected on nonpartisan ballot. Judges unopposed in reelection effort, run for retention. Water court judges are appointed by chief justice; Workers' Compensation judges are appointed by the governor.
Nebraska	All judges appointed initially by governor from nominees submitted by judicial nominating commissions. Judges run for retention on non-partisan ballot in general election following initial three-year term; subsequent terms are six years.
Nevada	All elected on nonpartisan ballot.
New Hampshire	All appointed by governor and confirmed by majority vote of elected five-member executive council.
New Jersey	Judges of Supreme Court, superior court, tax court and municipal court appointed by governor with advice and consent of Senate, except judges of municipal courts serving a single municipality who are appointed by the governing body. Judges are reappointed for seven-year terms by the governor (to age 70) with the advice and consent of Senate. Surrogates selected in partisan elections.
New Mexico	Supreme Court, court of appeals, district and metropolitan judges appointed by governor from list submitted by a judicial nominating commission. At next general election, after appointment, judges run for full terms in partisan, contested election. The elected judge runs for subsequent terms in uncontested retention elections. Judges of probate court and municipal and magistrate courts are selected in partisan elections.
New York	All elected on partisan ballot, except judges of Court of Appeals, who are appointed by governor from list submitted by commission on judicial nomination with advice and consent of Senate. Governor also appoints judges of court of claims and designates members of appellate division of supreme court. Mayor of New York City appoints judges of criminal and family courts in the city from list submitted by a judicial nominating commission, established by mayor's executive order.
North Carolina	All elected on partisan ballot, except special judges of superior court who are appointed by governor, and magistrates, who are appointed by senior resident superior court judge.
North Dakota	All elected on nonpartisan ballot.
Ohio	All nominated in partisan primary elections, but in general elections, party affiliations not listed on ballot. Court of claims judges may be appointed by chief justice of Supreme Court from ranks of Supreme Court, court of appeals, court of common pleas or retired judges.
Oklahoma	Supreme Court, Court of Criminal Appeals, court of appeals and Workers' Compensation Court judges appointed by governor from list of three names submitted by judicial nominating commission. Judges run for retention on nonpartisan ballot at first general election following completion of one year's service; Workers' Compensation Court judges reappointed by governor. District and associate district judges elected on nonpartisan ballot. Special judges appointed by district judges within judicial administrative districts. Municipal judges appointed by governing body of municipality.
Oregon	All judges elected on nonpartisan ballot for six-year terms, except municipal judges who are generally appointed and serve as prescribed by city council.
Pennsylvania	All initially elected on partisan ballot and thereafter on nonpartisan retention ballot, except magistrates (Pittsburgh) who are appointed by mayor with advice and consent of city council.
Rhode Island	All judges appointed by governor from list submitted by Judicial Nominating Commission, with the separate advice and consent of the Senate and House of Representatives. All judges hold office during good behavior.

SELECTION AND RETENTION OF JUDGES — Continued

<i>State or other jurisdiction</i>	<i>How selected and retained</i>
South Carolina	Supreme Court, court of appeals, circuit court and family court judges elected by legislature from names submitted on a nonpartisan basis by Judicial Merit Selection Commission. Probate judges elected on partisan ballot. Magistrates appointed by governor with advice and consent of Senate. Municipal judges appointed by mayor and aldermen of city.
South Dakota	Supreme Court justices appointed by governor from nominees submitted by Judicial Qualifications Commission. Justices run for retention at first general election after three years in office. Circuit court judges elected on nonpartisan ballot. Magistrates appointed by presiding judge of judicial court with approval of Supreme Court.
Tennessee	Judges of the Supreme Court and intermediate appellate courts appointed initially by governor from list of three nominees submitted by Appellate Court Nominating Commission. Judges run on nonpartisan retention ballot at biennial general election held more than 30 days after occurrence of vacancy. All other judges elected on partisan ballot, except some municipal and city court judges, who are appointed by governing body of city.
Texas	All elected on partisan ballot (method of selection for municipal judges determined by city charter or local ordinance).
Utah	Supreme Court, district court, circuit court and juvenile court judges appointed by governor from list of at least three nominees submitted by Judicial Nominating Commission. Judges run unopposed for retention in general election following initial three-year term; thereafter run on record for retention every 10 (Supreme Court) and six (other courts of record) years.
Vermont	Supreme Court justices, superior court and district and family court judges nominated by Judicial Nominating Board and appointed by governor with advice and consent of Senate. Judges retained by vote of general assembly for six-year terms.
Virginia	All full-time judges elected by majority vote of legislature.
Washington	Supreme Court, court of appeals, superior court and district court judges elected on nonpartisan ballot. Municipal judges in cities having a population greater than 400,000 are elected on nonpartisan ballot; municipal judges in cities of less than 400,000 appointed in manner determined by city legislative body.
West Virginia	Supreme Court of Appeals judges, circuit court judges and magistrates elected on partisan ballot. Municipal judges selected according to city charter.
Wisconsin	Supreme Court, court of appeals and circuit court judges elected on nonpartisan ballot. Municipal court judges selected according to bylaw or ordinance adopted by city council, town board or village board.
Wyoming	Supreme Court justices, district and county court judges appointed by governor from list of three nominees submitted by Judicial Nominating Commission. Judges run for retention on nonpartisan ballot at first general election occurring more than one year after appointment. Justices of the peace elected on nonpartisan ballot. Municipal (police) judges appointed by mayor with consent of council.
Dist. of Columbia	Court of Appeals and superior court judges nominated by president of the United States from a list of persons recommended by District of Columbia Judicial Nominating Commission; appointed upon advice and consent of U.S. Senate.
American Samoa	Chief justice and associate justice(s) appointed by the U.S. Secretary of the Interior pursuant to presidential delegation of authority. Associate judges appointed by governor of American Samoa on recommendation of the chief justice, and subsequently confirmed by the Senate of American Samoa.
Guam	All appointed by governor with consent of legislature from list of nominees submitted by Judicial Council; thereafter, run on record for retention every seven years.
Nn. Mariana Islands	All appointed by governor with advice and consent of Senate.
Puerto Rico	All appointed by governor with advice and consent of Senate.
U.S. Virgin Islands	All appointed by governor with advice and consent of legislature.

Sources: Judicial Selection in the United States: A Compendium of Provisions, 3rd Edition (Chicago: American Judicature Society), Forthcoming 2000; "Judicial Selection in the States: Appellate and General Jurisdiction Courts," American Judicature Society.

Note: Unless otherwise specified, judges included in this table are in the state courts of last resort and intermediate appellate and general trial courts.



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THE ALASKA COURT SYSTEM OPPOSES SJR 22

SJR 22 would shorten the periods between retention elections for supreme court justices and superior court judges. The proposed shortened retention periods would increase costs to the state, lower voters' scrutiny of individual judges, and are not in line with retention terms in other merit selection states.

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

The following periods between retention elections are established in the Alaska Constitution:

- Supreme Court Justice: At first general election held more than three years after appointment, and then every 10th year
- Superior Court Judge: At the first general election held more than three years after appointment, and then every 6th year

Alaska's Constitution strikes the right balance between public accountability and judicial independence. Alaska's Constitutional delegates worked hard to create a judicial merit and selection system that delicately balances the public's right to an accountable judiciary with the important goal of a strong and independent judiciary. The current proposal to change retention terms would upset that balance and damage the integrity of Article IV. The convention minutes show that the drafters specifically considered and rejected a proposal to decrease the retention term for supreme court justices to six years.

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

Shorter retention terms increase costs. The judicial evaluation process is integral to retention elections. The Judicial Council provides voters with important information on the performance of each judge or justice, so that voters can make informed retention decisions. Increasing the frequency of retention elections would increase the number, and thus the cost, of these evaluations.

Alaska's current retention terms are in line with retention terms in other merit selection states. Twenty other states have merit selection and retention laws similar to Alaska's. Retention terms in many of those states are similar to or longer than Alaska's current terms.

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

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

Even the states with the shortest retention terms have longer terms than are proposed in SJR 22: Arizona (6 years supreme, 4 years superior), Kansas (6 years supreme court, 4 years district court), Oklahoma (6 years supreme court, 4 years district court).

how long?

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

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

The Alaska Judicial Council opposes shortening retention terms to four years as proposed by SJR 15

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

Shorter terms discourage qualified attorneys from applying. Shorter retention terms, with the lesser job security they entail, will discourage highly qualified judicial applicants. This will be especially true for experienced and successful private practitioners. The result of SJR 15 may be a lesser qualified judiciary with less experience representing private citizens.

Increased numbers of judges on the ballot decrease voters' scrutiny of individual judges. At each general election voters are bombarded with information about candidates and ballot propositions leading to what are referred to as "bed-sheet ballots." Voters already have limited time to study information on judges standing for retention. (There are 33 judges now scheduled to be on the ballot this year.) Increasing the numbers of judges on the ballot would only exacerbate that problem.

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

Alaska's current retention terms are in line with retention terms in other merit selection states. Twenty other states have merit selection and retention laws similar to Alaska's. Retention terms in many of those states are similar to or longer than Alaska's current terms, while only three of those states have terms even approaching the four years proposed in SJR 15. No other merit selection states have terms as short as proposed by SJR 15.

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

require Senate confirmation of appointees.

Retention terms in eight other states are significantly longer than the terms proposed in SJR 15: Florida (6 years supreme, 6 years circuit), Iowa (8 years, 6 years), Nebraska (6 years), New Mexico (8 years for appellate, 6 years for district), South Dakota (8 years for supreme court), Tennessee (8 years supreme court), Vermont (6 years), Wyoming (8 years for supreme, 6 years for district court).

Only three states have retention terms even approaching the terms proposed in SJR 15: Arizona (6 years supreme, 4 years superior), Kansas (6 years supreme court, 4 years district court), Oklahoma (6 years supreme court, 4 years district court).

The Judicial Council's thorough evaluation process is more effective in ensuring public accountability than shorter retention terms. Alaska has a system of judicial performance evaluation that is used as a model throughout the United States and in many other countries. The Judicial Council has created a system in which more than 7,500 people in 1998 had an opportunity to critique judicial performance. Citizens commenting included jurors, citizens at public hearings, police, probation officers, social workers, court employees, attorneys and independent court watchers. Their input was summarized and considered by the Judicial Council along with detailed information about appellate affirmances and reversals, peremptory challenges, promptness, conflicts of interest and other aspects of performance. The information was available throughout the state in news articles, on the Internet, in the Alaska Voters' Pamphlet and through other media.

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

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

Conclusion. Alaska already has a system that emphasizes both judicial accountability and judicial independence. A thorough evaluation gives Alaska voters more information on judicial performance than is available anywhere else in the world. The judicial independence so prized by our constitutional drafters allows courts to protect the constitutional rights of Alaskans. Shortening retention terms as proposed in SJR15, shorter than in any merit selection state, will upset this delicate balance. The change is unnecessary, expensive, and would discourage quality judicial applicants. Ultimately, the goal of the Judicial Council is to maximize judicial excellence. This proposal is counterproductive to that goal.

Sponsor Statement - SJR 15 (1999)

SJR 15 proposes amendments to the Constitution of the State of Alaska that are designed to bring a measure of public involvement to the judicial selection process, and to increase the judicial branch's accountability to Alaskans. It does so in three ways.

First, SJR 15 allows the governor to fill court vacancies by appointing any attorney who meets the qualifications set out in the constitution and state statutes. This differs from the current system, in which the governor's choices are limited to only those nominees selected by the Alaska Judicial Council (AJC), a body which has little political accountability. Three of the six voting members on the AJC are selected by the Alaska Bar Association and are not required to undergo any type of confirmation process. The other three are non-attorney members appointed by the governor and subject to legislative confirmation. Since AJC members serve lengthy six-year terms, and only half are chosen by elected officials accountable to the voters, opportunities to change the composition of the council are exceedingly rare.

Under Article IV, Section 5 of the Alaska Constitution, the AJC is allowed to submit as few as two names to the governor to fill each judicial vacancy. Out of the thousands of attorneys in Alaska, the governor can choose only among those hand-picked few approved by AJC. This makes the governor's appointment power largely ceremonial. A committee of six persons exercises near total control over who is permitted to serve in one of the three branches of state government. There is no other example in our constitutional order of such enormous power being concentrated in the hands of a few non-elected functionaries. It is also noteworthy that three of the six AJC members are attorneys who are permitted to represent clients in the courtrooms of judges who may some day apply and be considered by the AJC to fill future vacancies on higher courts.

The second change proposed by SJR 15 is to require legislative confirmation of the governor's appointments to fill vacancies on the superior court and supreme court. This is similar to the federal system, in which the president's appointees to fill vacancies on the federal bench are confirmed by the U.S. Senate. Many other states also require some form of legislative confirmation, which allows the public to participate in the process through their elected representatives. Confirmation hearings provide a valuable opportunity for judicial nominees to be questioned about their philosophy on interpreting and applying statutory and constitutional law.

Finally, SJR 15 would increase the frequency of judicial retention elections. Currently, each superior court judge and supreme court justice 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 retention election, supreme court justices are up for approval or rejection every tenth year and superior court judges every sixth year. SJR 15 changes these intervals to six years for supreme court justices and four years for superior court judges. This change will provide Alaska voters more frequent opportunities to assess the performance of those who serve us in the judicial branch of government.

Prepared by Mike Pauley, Staff Aide to Senator Loren Leman (907-465-3841)
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(1999)

Resolution Proposes Increased Accountability from Judiciary

Juneau – A proposed constitutional amendment introduced today by Senator Loren Leman (R-Anchorage) and Senator Dave Donley (R-Anchorage) will provide increased accountability from state judges and change the process for filling judicial vacancies.

"The role of the court system in Alaska government has changed in recent years, and this change has not been for the better," stated Senator Leman. "Increasingly, state judges have abandoned their constitutional role as *interpreters* of the law, and are instead beginning to *write* the law. But this is the responsibility of *elected* public officials, who are accountable to the people. If judges continue to act as policymakers, then we need to allow the voters and the other two branches of government to place some checks on their growing power."

Senate Joint Resolution 15 provides for more frequent retention elections of judicial officers. Supreme court justices would appear on the ballot once every six years, instead of the current ten year term. Likewise, superior court judges would appear on the ballot every fourth year instead of every six years. SJR 15 also changes the judicial appointment process by allowing the governor to appoint any licensed attorney in Alaska to fill judicial vacancies, instead of limiting the governor's selection to a small list of nominees approved by the attorney-dominated Alaska Judicial Council. The governor's judicial appointees would not take office until confirmed by a majority of the legislature meeting in joint session, just as the U.S. Senate confirms all Presidential appointees to the federal courts.

"This amendment will help restore the delicate balance of power between our three branches of government," commented Senator Leman. "Judges are servants of the people, similar to other government officials, and must be accountable to the people." SJR 15 will allow the governor, the legislature, and the voters to have greater input in the judicial selection process.

Senator Donley noted that the Supreme Court's *Bess v. Ulmer* decision last year provides a vivid example of why judicial reform is needed. "In the *Bess* decision, the Supreme Court denied the people of Alaska their right to vote on a constitutional amendment related to prisoners' rights, without even allowing the parties to brief the issue. This amendment was designed to correct the worst excesses of the flawed *Cleary* settlement, as well as several other court decisions giving convicted prisoners in Alaska special rights. With the *Bess* ruling, voters have been denied the opportunity to correct this court's previous flawed decisions. That sets a dangerous precedent that undermines democratic self-government in Alaska."

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