

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

5 A BILL FOR AN ACT ENTITLED: "ESTABLISHING A MONTANA JUDICIAL PERFORMANCE EVALUATION
6 SYSTEM; CREATING A JUDICIAL PERFORMANCE EVALUATION COMMISSION AND PROVIDING FOR
7 DUTIES AND MEMBERS; ALLOCATING THE COMMISSION TO THE DEPARTMENT OF ADMINISTRATION
8 FOR ADMINISTRATIVE PURPOSES; REQUIRING THE COMMISSION TO PERFORM EVALUATIONS FOR
9 DISTRICT COURT JUDGES AND SUPREME COURT JUSTICES; REQUIRING THE COMMISSION TO
10 CONTRACT FOR A SURVEY; REQUIRING THE SECRETARY OF STATE TO PUBLISH A JUDICIAL
11 EVALUATION INFORMATION PAMPHLET; PROVIDING THE COMMISSION AND THE SECRETARY OF
12 STATE RULEMAKING AUTHORITY; AND AMENDING SECTIONS 3-1-1124, 13-27-401, AND 13-27-410,
13 MCA.
14

15 WHEREAS, the Montana Legislature finds that it is necessary to provide a comprehensive evaluation
16 system of judicial performance to provide Montana citizens with fair, responsible, and useful information about
17 the judicial performance of supreme court justices and district court judges; and

18 WHEREAS, providing information to the people of Montana regarding the performance of judges and
19 justices is a matter of public interest and statewide concern; and

20 WHEREAS, the information provided by a comprehensive evaluation system of judicial performance
21 will provide judges and justices with useful information about their own performances; and

22 WHEREAS, the Montana Legislature has decided to establish an independent office on judicial
23 performance evaluation with authority to implement an evaluation process and conduct and publicize
24 evaluations.
25

26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
27

28 NEW SECTION. **Section 1. Judicial performance evaluation commission -- appointment --**

1 **members -- rulemaking.** (1) There is a judicial performance evaluation commission. The commission
2 consists of 11 members as follows:

3 (a) three members appointed by the president of the senate, including one retired district court
4 judge but no other member currently or formerly licensed to practice law in Montana;

5 (b) three members appointed by the speaker of the house of representatives, including only one
6 member currently or formerly licensed to practice law in Montana;

7 (c) three members appointed by the governor, including only one member currently or formerly
8 licensed to practice law in Montana; and

9 (d) two members appointed by the members of the supreme court, including only one member
10 currently or formerly licensed to practice law in Montana.

11 (2) A person currently serving as a legislator or a judge may not be appointed to the commission.

12 (3) (a) A commission member appointed under subsection (1) serves a 4-year term.

13 (b) A member may not serve more than three consecutive terms.

14 (c) When a vacancy arises in the commission, the replacement must be appointed for the
15 unexpired term by the same appointing authority that appointed the member whose departure created the
16 vacancy.

17 (4) The commission shall elect a chair from among its members.

18 (5) The commission shall provide recommendations to the Legislature regarding the commission's
19 budget and if the judicial performance evaluation program should be expanded to other courts.

20 (6) The commission may adopt rules to implement the provisions of [sections 4 through 8].
21

22 **NEW SECTION. Section 2. Salary and expenses -- staff.** (1) A commission member may not
23 receive compensation or benefits for the member's service. A commission member may receive per diem and
24 travel expenses as provided in Title 2, chapter 18, part 5.

25 (2) The commission shall employ an executive director and may employ additional staff as
26 necessary within budgetary constraints.

27 (3) The commission is allocated to the department of administration for administrative purposes
28 only as prescribed in 2-15-121, except that the provisions of 2-15-121(2)(d) do not apply.

1
2 **NEW SECTION. Section 3. Definitions.** As used in [sections 3 through 8], unless the context
3 requires otherwise, the following definitions apply:

4 (1) "Bias" means prejudice for or against a party or issue arising for reasons other than the facts of
5 a case or the law governing a case. Bias in a judge may be inferred from comments, facial expressions, prior
6 activity, distortion of the law to obtain a particular result, or a conflict of interest.

7 (2) "Commission" means the judicial performance evaluation commission established in [section
8 1].

9 (3) A "conflict of interest" arises when a judge has a financial, political, or other interest that
10 arguable creates bias.

11 (4) "Court administrator" means the position established in 3-1-701.

12 (5) "Impartiality means the practice of making judicial decisions in accordance with the law, fairly,
13 and without evidence of bias.

14 (6) "Judge" means a district court judge or a supreme court justice.

15 (7) "Open-mindedness" means a willingness to:

16 (a) consider opposing views and alternative solutions permitted by law for resolving cases;

17 (b) remain open to persuasion despite a judge's existing views;

18 (c) concede that there is an appearance of one's own bias; and

19 (d) treat each case in accordance with the fact presented and the governing law.

20
21 **NEW SECTION. Section 4. Judicial performance evaluations.** (1) Beginning in 2026, the
22 commission shall prepare:

23 (a) a midterm performance evaluation for each district court judge during the third year of the
24 judge's term;

25 (b) a pre-election performance evaluation for each district court judge during the fifth year of the
26 judge's term;

27 (c) a midterm performance evaluation for each justice of the Montana Supreme Court during the
28 third year of the justice's term;

1 (d) a pre-election performance evaluation for each supreme court justice during the seventh year
2 of the justice's term; and

3 (e) a pre-election performance evaluation for each judge appointed to a vacancy during the year prior
4 to the last year of the judge's current term.

5 (2) The performance evaluation for a judge under subsection (1) may consider only the information
6 listed in subsections (3) and (4). The performance evaluation must give primary emphasis to information
7 gathered since the judge's election or appointment to the judge's current term in office.

8 (3) The information a performance evaluation must consider is as follows:

9 (a) the results of the judge's most recent judicial performance survey conducted in accordance
10 with [section 5];

11 (b) information acquired by observation of the judge's conduct in the courtroom;

12 (c) the judge's judicial disciplinary record, if any;

13 (d) public comment directed toward the commission whether solicited or unsolicited;

14 (e) information from any earlier judicial performance evaluation of the judge, except that the
15 commission shall rely primarily on information gathered subsequent to the last judicial election; and

16 (f) any other factor the commission considers relevant to evaluating the judge's performance and
17 authorized as a permissible factor previously by rule.

18 (4) The commission shall make rules governing the conduct of courtroom observation. The rules
19 must specify:

20 (a) who may perform the courtroom observation;

21 (b) whether the courtroom observation must be performed in person or may be performed by
22 electronic means; and

23 (c) the standards used to evaluate the behavior observed.

24 (5) The commission may invite a judge to appear before the commission to discuss the judge's
25 judicial performance. Information disclosed during this meeting is confidential.

26 (6) The commission may meet in a closed meeting to discuss a judge's judicial performance
27 evaluation by complying with Title 2, chapter 3, part 2.

28 (7) A judge may provide a written statement, not to exceed 200 words, that must be included in the

1 judge's evaluation report.

2

3 **NEW SECTION. Section 5. Judicial performance survey.** (1) A third party under contract to the
4 commission shall conduct a judicial performance survey. The third party may not be affiliated with a legal firm or
5 a legal professional.

6 (2) (a) Each judicial performance survey must survey respondents in each of the following
7 classifications:

8 (i) attorneys who have appeared before the judge as counsel either pro hac vice or while licensed
9 to practice law in Montana;

10 (ii) jurors who have served in one or more cases before the judge; and

11 (iii) court staff who have worked with the judge.

12 (b) Only a respondent under subsection (2)(a)(i) who is admitted to practice law in the state and in
13 good standing with the state bar of Montana may evaluate a judge's legal ability under subsection (7)(a).

14 (3) The commission may establish by rule additional classifications that the commission deems
15 helpful to voters.

16 (4) All survey responses are confidential, including added comments.

17 (5) If the commission provides information to a judge or the court administrator, it must do so in a
18 manner that protects the anonymity of survey respondents.

19 (6) A survey must be provided to a juror respondent no more than 30 days after the completion of
20 the case in which the juror served.

21 (7) Surveys must include questions inquiring into the judge's:

22 (a) legal ability, including the following:

23 (i) understanding of the substantive law and rules of procedure and evidence;

24 (ii) attentiveness to factual and legal issues;

25 (iii) adherence to precedent and ability to justify clearly any departures from precedent;

26 (iv) appreciation of the practical impact on the parties of the judge's rulings, including rulings that
27 cause delay or increased litigation expense;

28 (v) clarity in writing;

- 1 (vi) clarity in explaining the bases for judicial opinions; and
- 2 (b) judicial conduct, including the following:
- 3 (i) courtesy toward attorneys, court staff, witnesses, and others interacting with the judge's court;
- 4 (ii) appropriate courtroom decorum;
- 5 (iii) demeanor and personal attributes that promote public trust and confidence in the judicial
- 6 system;
- 7 (iv) preparedness;
- 8 (v) avoidance of impropriety or the appearance of impropriety;
- 9 (vi) avoidance of bias and conflict of interest;
- 10 (vii) fairness, open-mindedness, and impartiality;
- 11 (viii) ability to communicate clearly, including the ability to explain the basis for written rulings, court
- 12 procedures, and decisions; and
- 13 (ix) compliance with 2-2-121 and 2-2-122, and the applicable rules of judicial conduct;
- 14 (c) administrative performance, including the following:
- 15 (i) workload management;
- 16 (ii) sharing proportionally the workload within the court or district; and
- 17 (iii) issuance of opinions and orders without unnecessary delay; and
- 18 (d) fidelity to:
- 19 (i) the Montana constitution, including Article III, section 1; and
- 20 (iii) 1-2-101 and 1-2-102.
- 21 (8) If the commission determines that a survey question is not appropriate for a respondent
- 22 category, the commission may omit the question from the survey provided to that respondent group.
- 23 (9) (a) The survey must allow respondents to indicate responses either on a numerical scale from
- 24 one to five or in the affirmative or negative, with an option for an inability to respond in the affirmative or
- 25 negative.
- 26 (b) The commission may allow respondents to provide written comments other than those that
- 27 could, if used in a hiring process, trigger a violation of federal or state employment law.
- 28 (10) The commission shall compile and make available to each judge that judge's survey results.

1

2 **NEW SECTION. Section 6. Midterm reports.** (1) The commission shall compile a midterm
3 report for each judge relying on that judge's midterm evaluation. The midterm report may also be based on
4 further information the commission considers useful for purposes of judicial evaluation or self-improvement.

5 (2) The commission shall provide the midterm report to the evaluated judge, the Montana supreme
6 court, and the court administrator.

7 (3) (a) The commission may publish a partial midterm report for a judge whose appointment date
8 precludes the collection of complete midterm evaluation data. For a newly appointed judge, a midterm report is
9 considered partial when the midterm evaluation is missing a respondent group.

10 (b) The commission's webpage must identify each judge receiving a partial midterm report.

11 (c) Prior to a partial midterm report, the commission shall inform the court administrator of judges
12 who will receive partial report.

13

14 **NEW SECTION. Section 7. Pre-election reports.** (1) The commission shall compile a pre-election
15 report for each judge relying on that judge's pre-election evaluation. The pre-election report may also be based
16 on further information the commission considers useful for purposes of judicial evaluation or self-improvement.

17 (2) The commission shall provide the pre-election report to the evaluated judge, the Montana
18 supreme court, and the court administrator.

19 (3) (a) The commission may publish a partial pre-evaluation report for a judge whose appointment
20 date precludes the collection of complete pre-election evaluation data. For a newly appointed judge, a pre-
21 election report is considered partial when the pre-election evaluation is missing a respondent group.

22 (b) The commission's webpage must identify each judge receiving a partial pre-election report.

23 (4) Prior to a partial pre-election report, the commission shall inform the court administrator of the
24 judges who will receive partial reports.

25

26 **NEW SECTION. Section 8. Publication of judicial performance reports.** (1) (a) The commission
27 shall provide each judge with the judge's reports in a timely manner. If a report is based on a pre-election
28 evaluation, then it must be provided at least 45 days before the last day on which the judge may file a

1 declaration of his or her candidacy in the next election.

2 (c) Each report, together with the information collected for the report, must remain confidential
3 unless the judge who is the subject of the report files a declaration of candidacy in the ensuing election. In that
4 event, the report and the information collected for it become public record on the day following the last day on
5 which the judge may file a declaration of candidacy.

6 (2) The report must include:

7 (a) a summary of the results of the judicial performance survey and tabulations of the responses to
8 each question;

9 (b) information concerning any public discipline that a judge has received and is not subject to
10 restrictions on disclosure under Title 3, chapter 1, part 11;

11 (c) a narrative describing the judge's performance with, at the option of the commission, an overall
12 score on a numerical scale from one to five;

13 (d) at the option of the judge evaluated, a written statement not to exceed 200 words submitted by
14 the judge within 15 days of receiving a copy of the report; and

15 (d) any other information the commission considers necessary to include in the report.

16 (3) The report may refer to information from a judge's earlier judicial performance report only if
17 necessary to provide context for the current reporting period.

18 (5) The commission shall make each report publicly available on the internet and may make it
19 publicly available by other means consistent with budgetary constraints.

20 (6) The commission shall provide a summary of the pre-election report for each judge running at
21 the ensuing election to the secretary of state for publication in a judicial voter information pamphlet as provided
22 in [section 10].

23 (7) The commission shall provide the court administrator with each report that becomes public
24 record.

25

26 **Section 9.** Section 3-1-1124, MCA, is amended to read:

27 **"3-1-1124. Disclosure for judicial selection -- appointment or assignment -- judicial**
28 **performance evaluation. (1)** If in connection with the selection or appointment of a judge, any state or federal

1 agency seeks information or written materials from the commission concerning that judge, information must be
2 divulged in accordance with procedures prescribed by the commission, including reasonable notice to the judge
3 affected.

4 (2) If in connection with the assignment of a retired judge to judicial duties, any appropriate
5 authority seeks information or written materials from the commission about that judge, information must be
6 divulged in accordance with procedures prescribed by the commission, including reasonable notice to the judge
7 affected.

8 (3) If in connection to the conduct of a judicial performance evaluation required by [section 4], the
9 judicial performance evaluation commission established in [section 1] seeks information or written materials
10 from the judicial standards commission about that judge, information must be divulged in accordance with the
11 procedures described by the judicial standards commission, including reasonable notice to the judge affected."

12

13 **Section 10.** Section 13-27-401, MCA, is amended to read:

14 **"13-27-401. Voter information pamphlet -- rulemaking.** (1) The secretary of state shall prepare for
15 printing a voter information pamphlet containing information relevant to the election, including but not limited to
16 the following information for each statewide ballot issue to be voted on at an election, as applicable:

- 17 (a) ballot title, fiscal statement if applicable, and complete text of the issue;
18 (b) the form in which the issue will appear on the ballot;
19 (c) arguments advocating approval and rejection of the issue; and
20 (d) rebuttal arguments.

21 (2) The secretary of state shall prepare for printing a judicial evaluation information pamphlet
22 containing for each incumbent judge running in a judicial election or retention election a summary of the judge's
23 most recent judicial performance evaluation. The pamphlet must also contain the commission's internet
24 address.

25 (2)(3) The ~~pamphlet~~ pamphlets must also contain a notice advising the recipient as to where
26 additional copies of the ~~pamphlet~~ pamphlets may be obtained.

27 (3)(4) Whenever more than one statewide ballot issue is to be voted on at a single election, the
28 secretary of state may publish a single pamphlet described in subsection (1) for all of the statewide ballot

1 issues. The secretary of state may arrange the information in the order that seems most appropriate, but the
2 information for all statewide ballot issues in the pamphlet must be presented in the same order.

3 ~~(4)(5)~~ The secretary of state may prescribe by rule the format and manner of submission of the
4 arguments concerning the statewide ballot issue and judicial performance evaluations.

5 (6) For the purposes of this section, "judge" has the meaning provided in [section 3]."
6

7 **Section 11.** Section 13-27-410, MCA, is amended to read:

8 **"13-27-410. Printing and distribution of voter information pamphlet pamphlets.** (1) At least 110
9 days before the election, the secretary of state shall arrange with the department of administration by
10 requisition for the printing and delivery of a voter information pamphlet for all statewide ballot issues and judicial
11 performance evaluations. The requisition must include a delivery list providing for shipment of the required
12 number of pamphlets to each county and to the secretary of state.

13 (2) The secretary of state shall estimate the number of copies necessary to furnish one copy to
14 each voter in each county, except that two or more voters with the same mailing address and the same last
15 name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in
16 determining the number of voter pamphlets to be ordered in the requisition.

17 (3) The department of administration shall call for bids and contract with the lowest bidder for the
18 printing and delivery of the voter information pamphlet. The contract must require completion of printing and
19 shipment, as specified on the delivery list, of the voter information pamphlets by not later than 45 days before
20 the election at which the statewide ballot issues and judges will be voted on by the people.

21 (4) The county official responsible for voter registration in each county shall mail one copy of the
22 voter information pamphlet to each registered voter in the county who is on the active voter list, except that two
23 or more voters with the same mailing address and the same last name may be counted as one voter. The
24 mailing label may include an address line that addresses the voter or the current resident. The mailing must
25 take place no later than 30 days before the election.

26 (5) Ten copies of the voter information pamphlet must be available at each precinct for use by any
27 voter wishing to read the explanatory information and complete text before voting on the statewide ballot issues
28 or judges."

1
2 NEW SECTION. Section 12. Codification instruction. (1) [Sections 1 through 2] are intended to
3 be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10,
4 apply to [sections 1 through 2].

5 (2) [Sections 3 through 8] are intended to be codified as an integral part of Title 3, chapter 1, and the
6 provisions of Title 3, chapter 1, apply to [sections 3 through 8].

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8

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