

FINAL REPORT

MONTANA SENATE SELECT COMMITTEE ON  
JUDICIAL OVERSIGHT AND REFORM

JANUARY 2025



## **COMMITTEE MEMBERS**

### **Voting Members**

Senate President Jason Ellsworth, R-Hamilton (Chair)  
Senate Majority Whip Barry Usher, R-Yellowstone/Musselshell (Vice Chair)  
Senate Majority Leader Steve Fitzpatrick, R-Great Falls  
Senate Majority Whip Tom McGillvray, R-Billings  
Senate Majority Whip Steve Hinebauch, R-Wibaux  
Sen. Wendy McKamey, R-Great Falls  
Sen. Carl Glimm, R-Kila  
Sen. Chris Friedel, R-Billings  
Sen. Mark Noland, R-Bigfork  
Sen. Daniel Emrich, R-Great Falls  
Sen. Jen Gross, D-Billings  
Sen. Shane Morigeau, D-Missoula  
Sen. Mary Ann Dunwell, D-Helena  
Sen. Janet Ellis, D-Helena  
Sen. Andrea Olsen, D-Missoula

### **Non-Voting Members**

House Majority Leader Sue Vinton, R-Billings  
Rep. Lyn Hellegaard, R-Missoula  
Rep. Fiona Nave, R-Columbus  
Andrew Billstein, Billings, Public Member  
Joan Mell, Hamilton, Public Member  
Jim Ramlow, Whitefish, Public Member

See Appendix A for a full list of members to comply with section 2-15-155, MCA. Members served terms until the start of the 2025 Legislative Session. See Appendix B for a letter from Democratic Senators appointed to the committee.

## BACKGROUND

In April 2024, Senate President Jason Ellsworth appointed a Senate Select Committee on Judicial Oversight and Reform (the SJOR) using his authority under Senate Rule 30-10(4). Fifteen of the members were senators and were allowed to vote. Another six members were non-voting members that included members of the House of Representatives and public members.

The SJOR met 12 times from April to December, including two 2-day meetings.

The initial committee objectives were as follows:

- create legislation to rein in Montana courts' abuse of power;
- restore coequal power among the three branches of government;
- create legislation to provide more oversight of the judiciary;
- propose changes to legislative rules relevant to court decisions and to strengthen legislative branch procedure; and
- create legislation to improve court processes, ensure fair tribunals, have efficient hearings and decisions on constitutional matters, improve voter information, provide for establishment of good factual records, and adhere to the constitution on legal questions. (See Appendix C)

For more information about the committee's meetings, including audio and video recordings of each meeting and meeting materials, visit the SJOR's website:

<https://archive.legmt.gov/committees/other-groups/sjor/>

## MEETINGS

During the SJOR's first meeting, members spent most of the time learning about and receiving an overview of the Montana Constitution and the United States Constitution. They also learned from legislative staff about the committee's investigative authority.

At meetings occurring throughout the summer, the SJOR heard presentations from fellow committee members, legislative staff, and invited panelists on a wide range of topics, including:

- the Marbury v. Madison decision;
- various legal terms members would encounter during discussions;
- recent legislation enacted by the Legislature on court rules of procedure and Article VII, section 2, of the Montana Constitution;
- the legal note procedure used by the Montana Legislature, including a review of litigation related to legislation and amendments from the 2021 and 2023 sessions;
- court opinions on ballot initiatives;
- judicial performance evaluations, especially those implemented in Utah;
- district court operations, including how cases are assigned, the use of retired judges,

and the procedure to substitute judges;

- perspectives from a retired district court judge and several practicing attorneys;
- diversity in state court judges;
- how other states structure and operate the judicial branches, including a review of specialty courts and impeachable offenses;
- Montana’s judicial performance measures;
- the Montana Judicial Standards Commission and judicial discipline in other states; and
- the results of a recent legislative performance audit of the Judicial Standards Commission.

In addition, the SJOR discussed proposed revisions to the Judicial Standards Commission rules, which were distributed for public comment during the time when the SJOR met.

## LEGISLATION

In mid-September, the SJOR members focused on draft legislation they proposed for the 2025 Legislature to consider. They spent the majority of the final meetings considering the drafts, receiving public comments on them, and revising the language.

Ultimately, the SJOR members voted to send 27 bills to the 2025 Legislature as committee proposals. A list of the committee’s bills is available in Appendix D.

## APPENDIX A: MEMBERS OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

**Senate President Jason Ellsworth**, R-Hamilton (Chair)

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**Senate Majority Leader Steve Fitzpatrick**, R-Great Falls

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**Senate Majority Whip Tom McGillvray**, R-Billings

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**Senate Majority Whip Steve Hinebauch**, R-Wibaux

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**Sen. Wendy McKamey**, R-Great Falls

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**Sen. Carl Glimm**, R-Kila

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**Sen. Jen Gross**, D-Billings  
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**Sen. Shane Morigeau**, D-Missoula  
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**Sen. Mary Ann Dunwell**, D-Helena  
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**Sen. Janet Ellis**, D-Helena  
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**Sen. Andrea Olsen**, D-Missoula  
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## **Non-Voting Members**

**House Majority Leader Sue Vinton**, R-Billings

**Rep. Lyn Hellegaard**, R-Missoula

**Rep. Fiona Nave**, R-Columbus

**Andrew Billstein**, Billings, Public Member

**Joan Mell**, Hamilton, Public Member

**Jim Ramlow**, Whitefish, Public Member

## APPENDIX B: LETTER FROM DEMOCRATIC SENATORS



# MONTANA STATE SENATE

State Capitol Building  
PO Box 200500  
Helena MT 59620-0500

April 12, 2024

Senator Jason Ellsworth  
President of the Senate  
P.O. Box 200500  
Helena, MT 59620-0500

Dear President Ellsworth:

As Democratic senators, our focus during this interim is on the real problems facing working Montanans—rising property taxes, the worsening housing crisis, threats to health care access, the serious shortage of affordable childcare, and the closure of nursing homes across the state. While we stand ready to partner with you and other Republicans on addressing these and other important issues, we cannot and will not waste valuable time and taxpayer resources to continue your party's campaign undermining the independence of our courts.

Accordingly, we cannot accept our appointments to the select committee and will not be participating in its activities.

Sincerely,

Handwritten signature of Jen Gross in black ink.

SEN. JEN GROSS  
Senate District 25

Handwritten signature of Janet H. Ellis in black ink.

SEN. JANET ELLIS  
Senate District 41

Handwritten signature of Shane Morigeau in black ink.

SEN. SHANE MORIGEAU  
Senate District 48

Handwritten signature of Andrea Olsen in black ink.

SEN. ANDREA OLSEN  
Senate District 50

Handwritten signature of Mary Ann Dunwell in blue ink.

SEN. MARY ANN DUNWELL  
Senate District 42

APPENDIX C: 2024 SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM DRAFT ORGANIZATIONAL AND PLANNING OUTLINE

# **2024 Senate Select Committee on Judicial Oversight and Reform**

## **Draft Organizational and Planning Outline**

### **Structure and formation**

Senate President Jason Ellsworth is appointing the Senate Select Committee on Judicial Oversight and Reform pursuant to Senate Rule S30-10(4).

Funding: \$35,000 is available via a line item in Program 21 for a select committee on the judiciary. Additional funding sources can be tapped if needed.

### **Membership**

#### **Voting members**

##### *Republicans:*

Sen. Jason Ellsworth (chair)  
Sen. Barry Usher (vice chair)  
Sen. Daniel Emrich  
Sen. Carl Glimm  
Sen. Wendy McKamey  
Sen. Tom McGillvray  
Sen. Steve Fitzpatrick  
Sen. Mark Noland  
Sen. Steve Hinebauch  
Sen. Chris Friedel

##### *Democrats:*

Senate President is consulting with Minority Leader about Democratic members

#### **Non-voting ad hoc members may be added to the select committee**

### **Committee Objectives**

- Create legislation to rein in Montana courts' abuse of power
- Restore coequal power among the three branches of government
- Create legislation to provide more oversight of the judiciary
- Propose changes to legislative rules relevant to court decisions, strengthen Legislative Branch procedure
- Create legislation to improve court processes, ensure fair tribunals, have efficient hearings & decisions on constitutional matters, improve voter information, provide for establishment of good factual records and adherence to constitution on legal questions

### **Initial Topics for Committee's Consideration**

*All items listed as legislation are suggested for discussion, not formal proposals for bills at this point*

#### **1. Committee education and issues overview**

- A. Compare Montana to other states' judicial systems

- B. Review legislation from past few sessions addressing judicial branch issues
- C. Review 2021 Legislature's Special Select Committee on Judicial Accountability and Transparency's report(s)
- D. Review Frontier Institute's analysis of judicial branch problems
- E. Review court decisions on ballot initiative issues in past ~10 years
- F. Review frequency of Montana courts being overturned by federal courts compared to other states

## **2. Authority of Legislative Branch**

### **A. Legislative Rules**

- Why are our rules in statute?
- Bill(s) on timing of vetoes and veto overrides
  - Define exactly when a chamber has possession of a bill
  - Bill defining what qualifies as Legislature being "in" or "not in" session
  - Constitutional amendment on veto override process?
  - Clarify appropriate notice to Legislature regarding a bill being vetoed, method of delivery to the Legislature
  - Clarify chain of custody of every phase of official copy of a bill

### **B. Strengthening legislative oversight/involvement**

- Staffing and legal assistance needs
- Funding and processes for intervening in court cases
  - Are bills passed in 2023 adequate?
- Fix gap in the law identified by the Supreme Court in the recent abortion initiative. Amend Section 13-27-228(1), MCA to make it clear that legislative interim committees always review initiatives, whether an AG finds them legally sufficient or whether they are approved for signature gathering by another method (such as a court order)

## **3. Authority of Judicial Branch**

### **A. Judicial branch involvement in legislative rules**

- Bill to clarify judicial branch lacks authority to interpret or enforce legislative rules unless the rules in question violate the constitution
- Bill to require judiciary to first defer to Legislative Rules Committee or ask committee for a ruling before court can render an opinion on a legislative rules issue
- Bill clarifying the "bad faith" analysis is limited to conduct in the litigation process and not involve legislative process. Also prohibiting evidence of legislative rule violations as part of any "bad faith" analysis
- Bill prohibiting the award of attorney fees for violations of legislative rules

### **B. Forward Montana case award of attorneys fees**

- Cut judicial branch budget?

### **C. Reining in judicial branch power**

- A bill modifying the recall provisions for Supreme Court justices to include situations where a Montana Supreme Court justice voted in favor of a decision which was reversed in whole or in part by the U.S. Supreme Court
- Further revisions to Judicial Standards Commission? (review 2023 legislation)
- Standards for retired judges hearing and deciding cases (also, retirement cannot be end of JSC complaints or other accountability measures, if that retired judge may later hear cases?)
- Separate Montana Bar from judicial branch?
- Prevent “court shopping” and provide for more robust initial district court-level fact-finding, evidentiary records, legal conclusions, etc.
- Clarifying or changing judicial branch’s decisions in ballot initiative matters

### **D. Voter education of judicial candidates**

- Possible bill to allow judicial candidates to run on a partisan basis (all judicial candidates? Supreme Court only? Optional or required?)

## **4. Authority of Executive Branch**

- Bill to prevent recess appointments without confirmation hearings

## **Background on relevant legislative authority**

**5-5-106. Scope and application of legislature investigative powers.** (1) (a) Pursuant to Article V, section 1, of the Montana constitution, the legislative power is vested in the legislature consisting of a senate and a house of representatives.

(b) The constitutional legislative power includes the legislature's broad power to investigate any subject related to enacting law, the implementation of enacted law, and the expenditure of money appropriated by the legislature.

(c) The presumption of constitutionality of legislative actions applies to legislative investigations.

(2) The broad scope and application of the legislature's investigative powers include but are not limited to the power to investigate:

(a) any subject regarding information in connection with the proper discharge of the legislature's function to enact, amend, or repeal statutes, appropriate money, audit state and local government finances and programs, or perform any other act delegated to the legislature by the constitution;

(b) any subject in which there is a legitimate use that the legislature can make of the information being sought;

(c) the management of state institutions and public agencies, as defined in 2-6-1002;

(d) matters concerning the administration of existing laws, proposed laws, or potentially necessary laws; and

(e) matters concerning defects in any social, political, or economic system to remedy those defects.

(3) The application and exercise of the legislature's investigative power must protect the rights of all persons and adhere to all state and federal constitutional protections related to privacy, life, liberty, and property.

**5-5-107. Subpoenas — witnesses — records.** (1) A subpoena requiring the attendance of any witness before either house of the legislature, a committee of either house, a committee established under legislative rules, or a statutory committee or an interim committee may be issued by the president of the senate, the speaker of the house, or the presiding officer of any committee before whom the attendance of the witness is desired.

(2) A subpoena compelling attendance of a witness is sufficient if:

(a) it states whether the proceeding is before the house of representatives, the senate, or a committee;

(b) it states the legislative purpose for issuing the subpoena;

(c) it is addressed to the witness;

(d) it requires the attendance of the witness at a time and place certain; and

(e) it is signed by the president of the senate, the speaker of the house, or the presiding officer of a committee.

(3) (a) In the discharge of its duties, either house of the legislature, a committee of either house, a committee established under legislative rules, or a statutory committee or an interim committee may issue a subpoena to compel the production of a record that is fixed in any medium and is retrievable from a person that is in possession, custody, or control of the record.

(b) A subpoena compelling the production of a record is sufficient if:

(i) it states whether the proceeding is before the house of representatives, the senate, or a committee;

(ii) it states the legislative purpose for issuing the subpoena;

(iii) it provides a description of the records being compelled for production;

(iv) it is addressed to a person;

(v) except as provided in subsection (3)(c), it requires the production of a record at a date and place certain, but not later than 10 business days from receipt of the subpoena; and

(vi) it is signed by the president of the senate, the speaker of the house, or the presiding officer of a committee.

(c) (i) A person that is served a subpoena to produce records that may include confidential information shall notify the presiding officer that signed the subpoena and submit a written notice of denial and a written explanation for the denial pursuant to 2-6-1009.

(ii) A person served a subpoena under subsection (3)(c)(i), may request additional time to produce the records pursuant to subsection (3)(b)(v).

(4) For the purposes of this section:

(a) "confidential information" has the meaning provided in 2-6-1002; and

(b) "person" has the meaning provided in 2-5-103.

APPENDIX D: BILLS REQUESTED BY THE SENATE SELECT COMMITTEE ON JUDICIAL  
OVERSIGHT AND REFORM, 2024

## Bills Requested by the Senate Select Committee on Judicial Oversight and Reform, 2024

| Bill Number           | Short Title                                                                                                             | Sponsor              |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------|----------------------|
| <a href="#">HB 30</a> | Requiring the Supreme Court to presume constitutionality of and deference to legislative acts                           | Rep. Lee Deming      |
| <a href="#">HB 35</a> | Allocating judicial standards commission to the department of justice                                                   | Rep. Fiona Nave      |
| <a href="#">HB 36</a> | Disallowing judge to serve as chair of judicial standards commission                                                    | Rep. Fiona Nave      |
| <a href="#">HB 39</a> | Repeal law disallowing parties from contributing to judicial candidates                                                 | Rep. Millett         |
| <a href="#">HB 52</a> | Generally revising administrative procedure laws relating to agency deference                                           | Rep. Lee Deming      |
| <a href="#">HB 65</a> | Audit State Bar of Montana                                                                                              | Rep. Lee Deming      |
| <a href="#">SB 13</a> | Remove Supreme Court original jurisdiction for ballot review                                                            | Sen. Daniel Emrich   |
| <a href="#">SB 14</a> | Audit Office of Disciplinary Council                                                                                    | Sen. Barry Usher     |
| <a href="#">SB 15</a> | Revising grounds for impeachment                                                                                        | Sen. Tom McGillvray  |
| <a href="#">SB 16</a> | Allowing legislative committees to find contempt for violation of legislative subpoena                                  | Sen. Mark Noland     |
| <a href="#">SB 20</a> | Prohibit retired judges from hearing constitutional cases                                                               | Sen. Jason Ellsworth |
| <a href="#">SB 21</a> | Allowing legislative and executive leadership to vacate a writ of mandamus                                              | Sen. Barry Usher     |
| <a href="#">SB 30</a> | Revise laws related to judiciary and the rule of necessity                                                              | Sen. Tom McGillvray  |
| <a href="#">SB 31</a> | IOLTA Bill Interest back to client                                                                                      | Sen. Barry Usher     |
| <a href="#">SB 38</a> | Generally revise laws relating to attorney fees and prevailing parties for veto overrides                               | Sen. Greg Hertz      |
| <a href="#">SB 39</a> | Generally revise attorney fee awards                                                                                    | Sen. Greg Hertz      |
| <a href="#">SB 40</a> | Revise supreme court public records laws by opening deliberations and files to the public                               | Sen. Greg Hertz      |
| <a href="#">SB 41</a> | Requiring substitution of district court judges by random selection                                                     | Sen. Daniel Emrich   |
| <a href="#">SB 42</a> | Provide for partisan election of judges and justices                                                                    | Sen. Daniel Emrich   |
| <a href="#">SB 43</a> | Generally revise injunctive powers of the judiciary                                                                     | Sen. Daniel Emrich   |
| <a href="#">SB 44</a> | Generally revise laws regarding the separation of powers doctrine                                                       | Sen. Daniel Emrich   |
| <a href="#">SB 45</a> | Create a judicial performance evaluation commission and system                                                          | Sen. Tom McGillvray  |
| <a href="#">SB 47</a> | Enhance committee review of statewide ballot issues                                                                     | Sen. Wendy McKamey   |
| <a href="#">SB 48</a> | Generally revise laws relating to Judicial Standards Commission complaints                                              | Sen. Carl Glimm      |
| <a href="#">SB 49</a> | Exempt lawyers serving in certain public offices from professional disciplinary measure and proceedings while in office | Sen. Barry Usher     |
| <a href="#">SB 52</a> | Create Montana Court of Chancery                                                                                        | Sen. Tom McGillvray  |
| <a href="#">SB 66</a> | Generally revise definitions relating to the judiciary                                                                  | Rep. Fiona Nave      |

To see final status of each introduced bill, use the hyperlink in the table or visit <https://bills.legmt.gov/>