

Amendment - 2nd Reading-yellow - Requested by: Tom McGillvray - (S) Committee of the Whole

- 2025

69th Legislature 2025

Drafter: Rachel Weiss,

SB0045.002.015

SENATE BILL NO. 45

INTRODUCED BY T. MCGILLVRAY

BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

A BILL FOR AN ACT ENTITLED: "ESTABLISHING A MONTANA JUDICIAL PERFORMANCE EVALUATION SYSTEM; CREATING A JUDICIAL PERFORMANCE EVALUATION COMMISSION AND PROVIDING FOR DUTIES AND MEMBERS; ALLOCATING THE COMMISSION TO THE DEPARTMENT OF JUSTICE FOR ADMINISTRATIVE PURPOSES; REQUIRING THE COMMISSION TO PERFORM EVALUATIONS FOR DISTRICT COURT JUDGES AND SUPREME COURT JUSTICES; REQUIRING THE COMMISSION TO CONTRACT FOR A SURVEY; REQUIRING THE SECRETARY OF STATE TO ~~PUBLISH A~~ INCLUDE THE JUDICIAL EVALUATION INFORMATION IN THE VOTER INFORMATION PAMPHLET; PROVIDING THE COMMISSION AND THE SECRETARY OF STATE RULEMAKING AUTHORITY; PROVIDING RULEMAKING AUTHORITY; PROVIDING A TRANSITION; AND AMENDING SECTIONS 3-1-1124, 13-13-214, 13-27-401, AND 13-27-410, MCA."

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

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

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

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

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

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

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

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

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

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

11 (d) two members appointed by the ~~members of the~~ CHIEF JUSTICE OF THE supreme court, including
12 only one member currently or formerly licensed to practice law in Montana.

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

14 (3) (a) A commission member appointed under subsection (1) serves a 4-year term. Terms of the
15 commission members must be staggered.

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

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

20 (4) The commission shall elect a presiding officer from among its members.

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

23 (6) The commission may adopt rules to implement the provisions of [sections 4 through 8].
24

25 **NEW SECTION. Section 2. Judicial performance evaluation commission -- salary and expenses**

26 **-- staff -- administrative attachment.** (1) A judicial performance evaluation commission member may not

27 receive compensation or benefits for the member's service. A commission member may receive per diem and

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1 travel expenses as provided in Title 2, chapter 18, part 5.

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

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

6

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

9 (1) "Bias" means prejudice ~~for or against a party or issue arising for reasons other than the facts of~~
10 ~~a case or the law governing a case. Bias in a judge may be inferred from comments, facial expressions, prior~~
11 ~~activity, distortion of the law to obtain a particular result, or a conflict of interest~~ DISPLAYED BY USING EPITHETS,
12 SLURS, DEMEANING NICKNAMES, OR THREATENING, INTIMIDATING, OR HOSTILE ACTS OR BODY LANGUAGE THAT CREATES
13 AN APPEARANCE OF BIAS OR PREJUDICE.

14 (2) "Commission" means the judicial performance evaluation commission established in [section
15 1].

16 (3) ~~A "conflict of interest" arises when a judge has a financial, political, or other interest~~
17 ~~that arguably creates bias.~~

18 (4)(3) "Court administrator" means the position established in 3-1-701.

19 (5)(4) "Impartiality" means the ~~practice of making judicial decisions in accordance with the law, fairly,~~
20 ~~and without evidence of bias~~ ABSENCE OF PREJUDICE IN FAVOR OF OR AGAINST PARTICULAR PARTIES OR CLASSES OF
21 PARTIES AS WELL AS THE MAINTENANCE OF AN OPEN MIND WHEN CONSIDERING ISSUES THAT MAY COME BEFORE A
22 JUDGE.

23 (6)(5) "Judge" means a district court judge or a supreme court justice.

24 (7)(6) "Open-mindedness" means a ~~willingness to:~~

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

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

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

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~~(d) — treat each case in accordance with the facts presented and the governing law judge shall interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.~~

NEW SECTION. Section 4. Judicial performance evaluations. (1) Beginning in 2026, the

commission shall prepare:

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

(b) a preelection performance evaluation for each district court judge during the fifth year of the judge's term;

(c) a midterm performance evaluation for each justice of the Montana supreme court during the third year of the justice's term;

(d) a preelection performance evaluation for each supreme court justice during the seventh year of the justice's term; and

(e) a preelection performance evaluation for each judge appointed to a vacancy during the year prior to the last year of the judge's current term.

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

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

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

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

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

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

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

(f) any other factor the commission considers relevant to evaluating the judge's performance and

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

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

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

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

(4) Prior to a partial preelection report, the commission shall inform the court administrator of the judges who will receive partial reports.

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

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

(2) The report must include:

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

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

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

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

(e) any other information the commission considers necessary to include in the report, including reliably reported improprieties in the judge's conduct of the judge's office.

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

(4) The commission shall make each report publicly available on the internet ~~and may make reports publicly available by other means consistent with budgetary constraints.~~

(5) ~~The~~ On or before 105 days before the election, the commission shall provide a summary of the preelection report for each judge running at the ensuing election to the secretary of state for publication in a judicial evaluation information pamphlet as provided in [section 10].

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

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

"3-1-1124. Disclosure for judicial selection -- appointment or assignment -- judicial performance evaluation. (1) If in connection with the selection or appointment of a judge, any state or federal agency seeks information or written materials from the commission concerning that judge, information must be divulged in accordance with procedures prescribed by the commission, including reasonable notice to the judge affected.

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

(3) If in connection to the conduct of a judicial performance evaluation required by [section 4], the judicial performance evaluation commission established in [section 1] seeks information or written materials from the judicial standards commission about that judge, information must be divulged in accordance with the

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each registered voter in the county who is on the active voter list, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The mailing label may include an address line that addresses the voter or the current resident. The mailing must take place no later than 30 days before the election.

(5) Ten copies of the voter information pamphlet ~~and ten copies of the~~ THAT INCLUDES THE judicial evaluation information pamphlet must be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the statewide ballot issues or judges."

NEW SECTION. Section 13. Transition. (1) Within 30 days of [the effective date of this act], the appointing authorities in [section 1(1)] shall appoint the members of the judicial performance evaluation commission according to the schedule in subsection (2) of this section.

(2) (a) Of the three members appointed by the president of the senate, one shall serve a 2-year term and two shall serve 4-year terms.

(b) Of the three members appointed by the speaker of the house, two shall serve 2-year terms and one shall serve a 4-year term.

(c) Of the three members appointed by the governor, one shall serve a 2-year term and two shall serve 4-year terms.

(d) Of the two members appointed by the chief justice of the supreme court, one shall serve a 2-year term and one shall serve a 4-year term.

(3) Members appointed pursuant subsection (2) who were appointed:

(a) to a 2-year term may be reappointed, and the 2-year term does not count against the term limits provided in [section 1(3)(b)]; and

(b) to a 4-year term may be reappointed, and the 4-year term counts toward the term limits provided in [section 1(3)(b)].

NEW SECTION. Section 14. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20,