

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:

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

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

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

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

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

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

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

(3) (a) A commission member appointed under subsection (1) serves a 4-year term. TERMS OF THE COMMISSION MEMBERS MUST BE STAGGERED.

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

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

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

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

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

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

**-- staff -- administrative attachment.** (1) A judicial performance evaluation commission member may not receive compensation or benefits for the member's service. A commission member may receive per diem and travel expenses as provided in Title 2, chapter 18, part 5.

(2) The commission shall employ an executive director and may employ additional staff as

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

3 commission shall prepare:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (a) who may perform the courtroom observation;
- 2 (b) whether the courtroom observation must be performed in person or may be performed by
- 3 electronic means; and
- 4 (c) the standards used to evaluate the behavior observed.
- 5 (5) ~~The commission may invite a judge to appear before the commission to discuss the judge's~~
- 6 ~~judicial performance. Prior to issuing the judicial performance evaluation, the commission shall allow a judge~~
- 7 ~~who is the subject of a judicial performance evaluation to appear and speak at any commission meeting during~~
- 8 ~~which the judge's judicial performance evaluation is being considered.~~ Information disclosed during this meeting
- 9 is confidential.
- 10 (6) The commission may meet in a closed meeting to discuss a judge's judicial performance
- 11 evaluation by complying with Title 2, chapter 3, part 2.
- 12 (7) A judge may provide a written statement, not to exceed 200 words, that must be included in the
- 13 judge's performance evaluation report.
- 14
- 15 **NEW SECTION. Section 5. Judicial performance survey.** (1) A third party under contract with the
- 16 commission shall conduct a judicial performance survey. The third party may not be affiliated with a legal firm or
- 17 a legal professional.
- 18 (2) (a) Each judicial performance survey must survey respondents in each of the following
- 19 classifications:
- 20 (i) attorneys who have appeared before the judge as counsel either pro hac vice or while licensed
- 21 to practice law in Montana;
- 22 (ii) jurors who have served in one or more cases before the judge; and
- 23 (iii) court staff who have worked with the judge.
- 24 (b) Only a respondent under subsection (2)(a)(i) who is admitted to practice law in the state and in
- 25 good standing with the state bar of Montana may evaluate a judge's legal ability under subsection (7)(a).
- 26 (3) The commission may establish by rule additional classifications that the commission considers
- 27 helpful to voters.
- 28 (4) All survey responses are confidential, including added comments.

(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;

(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 not 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 procedures described by the judicial standards commission, including reasonable notice to the judge affected."

**Section 10.** Section 13-13-214, MCA, is amended to read:

**"13-13-214. Mailing absentee ballot to elector -- delivery to person other than elector.** (1) (a) Except as provided in 13-13-213 and in subsection (1)(c) of this section, the election administrator shall mail,

1 NEW SECTION. SECTION 13. TRANSITION. (1) WITHIN 30 DAYS OF [THE EFFECTIVE DATE OF THIS ACT], THE  
2 APPOINTING AUTHORITIES IN [SECTION 1(1)] SHALL APPOINT THE MEMBERS OF THE JUDICIAL PERFORMANCE EVALUATION  
3 COMMISSION ACCORDING TO THE SCHEDULE IN SUBSECTION (2) OF THIS SECTION.

4 (2) (A) OF THE ~~THREE~~ two MEMBERS APPOINTED BY THE PRESIDENT OF THE SENATE, ONE SHALL SERVE A  
5 2-YEAR TERM AND ~~TWO~~ one SHALL SERVE a 4-YEAR ~~TERMS~~ term.

6 (B) OF THE ~~THREE~~ two MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE, ~~TWO~~ one SHALL SERVE a  
7 2-YEAR ~~TERMS~~ term AND ONE SHALL SERVE A 4-YEAR TERM.

8 (C) OF THE ~~THREE~~ four MEMBERS APPOINTED BY THE GOVERNOR, ~~ONE~~ two SHALL SERVE a 2-YEAR ~~TERM~~  
9 terms AND TWO SHALL SERVE 4-YEAR TERMS.

10 (D) OF THE ~~TWO~~ three MEMBERS APPOINTED BY THE CHIEF JUSTICE OF THE SUPREME COURT, ONE SHALL  
11 SERVE A 2-YEAR term AND ~~ONE~~ two SHALL SERVE a 4-YEAR ~~TERM~~ terms.

12 (3) MEMBERS APPOINTED PURSUANT SUBSECTION (2) WHO WERE APPOINTED:

13 (A) TO A 2-YEAR TERM MAY BE REAPPOINTED, AND THE 2-YEAR TERM DOES NOT COUNT AGAINST THE TERM  
14 LIMITS PROVIDED IN [SECTION 1(3)(B)]; AND

15 (B) TO A 4-YEAR TERM MAY BE REAPPOINTED, AND THE 4-YEAR TERM COUNTS TOWARD THE TERM LIMITS  
16 PROVIDED IN [SECTION 1(3)(B)].

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

21 (2) [Sections 3 through 8] are intended to be codified as a new part in Title 3, chapter 1, and the  
22 provisions of Title 3, chapter 1, apply to [sections 3 through 8].

23 - END -