

## LEGAL REVIEW NOTE

**Bill No.:** HB 646

**LC#:** LC2937, To Legal Review Copy, as  
of February 18, 2025

**Short Title:** Elect supreme court by districts

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**Date:** February 21, 2025

### CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

*As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.*

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review IS NOT dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See *Alexander v. Bozeman Motors, Inc.*, 356 Mont. 439, 234 P.3d 880 (2010); *Eklund v. Wheatland County*, 351 Mont. 370, 212 P.3d 297 (2009); *St. v. Pyette*, 337 Mont. 265, 159 P.3d 232 (2007); and *Elliott v. Dept. of Revenue*, 334 Mont. 195, 146 P.3d 741 (2006).*

#### Legal Reviewer Comments:

Article VII, section 8, of the Montana Constitution provides: "(1) Supreme court justices and district court judges shall be elected by the qualified electors as provided by law. . . ."

Article VII, section 9, of the Montana Constitution provides:

(1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law. . . . (4) Supreme court justices shall reside within the state. During his term of office, a district court judge shall reside in the district and a justice of the peace shall reside in the county in which he is elected or appointed. The residency requirement for every other judge must be provided by law.

HB 646, as drafted, amends 3-2-101 to provide that justices of the Supreme Court "are each elected in a separate district by the qualified electors in that district at the election next preceding the expiration of the term of office of the justice's predecessor."

Section 2 of HB 646 provides for the makeup of the seven districts and requires the Legislature to review the districts after the decennial census to maintain districts "with approximately equal populations while following county lines."

In 2011, the Legislature referred LR 119 to the voters to change the law to elect each Supreme Court justice from one of seven districts of approximately equal population and provided a residency and voter-registration requirement.

HB 646, unlike LR 119, does not include a residency requirement with the district from which each justice is elected. In the case of LR 119, the referendum was challenged. In the court case that ensued, the Supreme Court discussed the structure and requirements of the Constitution, concluding that "[t]he language and structure of these sections demonstrate that the Constitution intends Supreme Court justices to be elected and serve on a statewide basis. . . ." *Reichert v. State*, 2012 MT 111, ¶ 64. The Supreme Court noted that the Constitution explicitly states:

[w]hen a justice or judge is to be selected from a discrete geographic area. . . . With respect to Supreme Court justices, however, the Constitution could, but does not, specify district elections. To the contrary, the residency requirements in Section 9(4) plainly contemplate that Supreme Court justice, district court judge, and justice of the peace are "state," "district," and "county" offices, respectively.

*Id.* at ¶ 64. The Court found that the Supreme Court was not intended to be a representative body, and it would be "incongruous to interpret the Constitution as contemplating a Supreme Court made up of justices who are elected from districts and [who] implicitly 'represent' regional interests." *Id.* at ¶ 65.

Finally, the Supreme Court explicitly held that Article VII, section 8(1), did not confer authority to convert the Supreme Court into a "district-based representative body." *Id.* at ¶ 75. The Supreme Court traced the adoption, history, and discussions concerning Article VII, and it held that such a change was facially unconstitutional and impermissible absent constitutional amendment. *Id.* at ¶¶ 75-82.

In 2021, the Legislature passed HB 325, a legislative referendum similar to LR 119, except that it did not require a justice to reside in a particular district to be elected for that district. HB 325 was challenged as unconstitutional in *McDonald v. Jacobsen*, 2022 MT 160. In *McDonald*, the Supreme Court dismissed the lack of a residency requirement as distinguishing the application of *Reichert*, noting that the “2012 *Reichert* precedent is squarely on-point.” *McDonald*, 2022 MT at ¶ 29. The Supreme Court conducted a lengthy analysis of *Reichert* and its application to HB 325 and ruled that the bill was unconstitutional and “was contrary to the spirit of protecting the right of all Montanans to vote [and would] deny each Montana their right to vote in the election of six out of the seven justices on their Supreme Court.” *Id.* at ¶ 54.

Because HB 646, as drafted, presents issues that were held unconstitutional in LR 119 and in HB 325, it may, likewise, present constitutional conformity issues by proposing amendments to the structure of the Supreme Court through statutory changes rather than constitutional amendments.

**Requester Comments:**