

# HOUSE RESEARCH

## Bill Summary

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**Authors:** Simon and others

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**Analyst:** Matt Gehring, 651-296-5052

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### Overview

This bill proposes to amend the Minnesota Constitution and enact conforming changes to statute to modify the process of selecting state court judges.

Establishing a system of retention elections, judges would be initially appointed by the governor, and upon completion of their first term in office, would be eligible to file for a retention election to the office. In the form of a question, voters would be asked whether a particular judge should be retained in office. If a majority of voters vote “yes,” the judge would be retained for a six-year term. If the majority of voters vote “no,” the office would be declared vacant and the governor would appoint a new individual to fill the vacancy. Vacancies would be required to be filled from a list of candidates nominated by a merit selection commission. In addition, all sitting judges would be evaluated by a Judicial Performance Commission once during their term and once near the completion of their term.

Prior to a retention election, the commission is required to evaluate a judge’s performance and rate the judge as “well-qualified,” “qualified” or “unqualified” for office. The performance evaluation would not affect the judge’s right to seek retention, but instead is meant to assist voters in evaluating the performance of judges.

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### **Article 1: Constitutional Amendment**

- 1**      **Constitutional amendment.** Modifies the Minnesota Constitution to provide that state judges shall initially be appointed by the governor, for a term to end at the first Monday in January following the next general election held more than one year after the appointment. At the end of the initial term, a judge may seek to be retained in office through a retention election. If the voters approve retaining the judge, the judge's term of office is six years.

The new constitutional language requires that a judicial performance commission evaluate the performance of judges in a nonpartisan manner, according to criteria developed and published by the commission, and any other criteria established by law. It also requires the governor to fill vacancies using a list of nominees submitted by a merit selection commission.

The current constitutional process, to be replaced by this bill, provides a six-year term of office for judges, and requires the governor to fill vacancies by appointment. If the governor fills a vacancy by appointment, an election for the office is to be held at the next general election held at least one year after the appointment.

- 2**      **Submission to voters.** Requires the constitutional amendment to be placed on the ballot at the November 2014 general election. The text of the question to the voters must read exactly as provided in the bill.
- 3**      **Transition.** Provides transitional language to facilitate implementation of the new constitutional requirements in the bill.

### **Article 2: Statutory Provisions**

- 1**      **Ballot question.** Specifies that, for purposes of Minnesota's campaign finance reporting laws, a judicial retention election does not come within the definition of a "ballot question" even though, in the context of an appellate judicial office, a retention election would consist of a question "voted on by all voters of the state."
- 2**      **Candidate.** Specifies that, for purposes of Minnesota's campaign finance reporting laws, a judge seeking to be retained in office is considered a "candidate" for the office.
- 3**      **Election.** Specifies that, for purposes of Minnesota's campaign finance reporting laws, a retention election is an "election."
- 4**      **First registration.** Modifies certain campaign finance registration requirements when a political committee, political fund, principal campaign committee, or party unit makes a contribution or expenditure to advocate the retention or defeat of a judicial candidate.

Registration would be required within 72 hours after a covered entity makes a contribution or expenditure in excess of \$100.

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- 5 Time for filing; campaign finance reports.** Requires additional campaign finance reports be filed if a political committee, political fund, or party unit makes aggregate expenditures in excess of \$100 related to a judicial retention election. Full reports would be required 42 and ten days prior to the retention election.
- 6 Judicial retention candidates; affidavits of candidacy.** Modifies the existing election law to reflect the new retention election process. This section requires a justice or judge filing for retention to include in their affidavit of candidacy the particular office in which the justice or judge seeks to be retained.
- 7 Filing fee.** Adds a judicial performance evaluation fee to a judicial candidate's filing fee, to be deposited in a special account.
- 8 Judicial elections; specification of name in election notice.** Modifies the existing election law to reflect the new retention election process. This section requires the notice of election to state the name of each justice or judge seeking retention, if more than one justice or judge is seeking retention at the same election.
- 9 Judicial retention candidates; ballot format.** Requires the official ballot to contain the names of all justices or judges seeking to retain their office. The existing law specifies the manner in which each office is to be labeled on the ballot.
- 10 Retention of judges; election process.** Specifies the method of filing for retention, and the procedures upon completion of the vote. A judge seeking to retain office must file an affidavit of candidacy with the secretary of state within the same time period established for other elected offices.
- If the majority of those voting at the election vote "no" for retention of a judge, then upon expiration of the term of office, the office is declared vacant and is filled through initial appointment by the governor. A judge who loses a retention election may not be considered to fill that resulting vacancy.
- If the majority of voters vote "yes," then the judge is retained for a six-year term.
- 11 Judicial vacancies.** Adds supreme court justices to the existing merit selection process provided in law.
- 12 Merit selection commission.** Provides conforming changes to reflect the merit selection process provided for in the bill.
- 13 Judicial retention elections; state general elections.** Provides that retention elections are to be held consistent with the procedures in law for administering the state general election. A cross-reference is established specifying ballot placement requirements.
- 14 Judicial performance evaluation; fee.** Permits the Supreme Court to establish a fee, no greater than \$15, on active attorneys in the state for the judicial performance evaluation process. An account is established in the special revenue fund for this purpose.
- 15 Judicial Performance Evaluation Commission.**

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The Judicial Performance Evaluation Commission, required by the constitution as amended by this bill, is designed to evaluate the performance of judges during their term in office.

**Subd. 1. Establishment.** Formally establishes the commission, and provides that it is an independent body not subject to the direct control of any branch of government.

**Subd. 2. Commission purpose.** The commission must conduct public hearings and adopt a process for evaluating judicial performance. The evaluation process must be designed to assist voters in evaluating judges, facilitate self-improvement of all judges, and promote public accountability of the judiciary.

**Subd. 3. Commission members.** (a) The independent judicial performance commission is a 24-member commission. Commission members must be residents of Minnesota, and may not be a sitting judge or public official, as defined in chapter 10A, while serving on the commission. "Public official" includes members of the legislature and certain legislative staff, constitutional officers and their chief administrative deputies, executive branch commissioners and specified executive staff, and several other miscellaneous governmental positions.

An attorney may not be appointed to the commission unless the attorney has been admitted to practice law in Minnesota for at least five years. Members of the commission may be reappointed for up to two additional terms.

(b) Members of the judicial performance commission are appointed as follows:

The governor appoints a total of eight members, each of whom serve the shorter of a four-year term or until the governor who made the appointment leaves office. No more than three of the governor's appointees may be attorneys at the time of appointment.

The supreme court appoints a total of eight members, one of whom must be appointed to serve as chair of the commission. Each appointee is appointed for a four-year term. No more than four of the court's appointees may be attorneys at the time of appointment.

The legislature appoints a total of eight members. In order, the speaker of the house appoints one member, the majority leader of the senate appoints one member, the minority leader of the house appoints one member, and the minority leader of the senate appoints one member. A second round of appointments is conducted in the same order. Legislative appointees serve a two-year term. No more than four of the legislative appointees may be attorneys at the time of appointment.

(c) In making appointments, qualified members of minority groups must be appointed. The importance of balanced geographic representation must be considered. Appointees must be individuals of outstanding competence and reputation.

(d) Judicial performance commission members must perform duties in an impartial and objective manner, and make recommendations based solely upon matters in the

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record as developed by the commission.

(e) A member of the commission may be removed at any time for cause, after notice and a hearing, or, upon proper notice, after missing three consecutive meetings.

(f) Members of the commission serve without compensation, but may be reimbursed for expenses.

(g) The commission is required to appoint an executive secretary. The Board on Judicial Standards is required to provide additional support as requested by the commission.

**Subd. 4. Meetings and data.** Specifies that meetings of the Judicial Performance Evaluation Commission must be open to the public, with some exceptions, and provides that data collected by the commission is public, with some exceptions.

**Subd. 5. Standards and procedures.** (a) Requires the commission to develop written standards by which judicial performance is to be evaluated. The standards, which must be approved by the supreme court, must also be periodically updated.

The bill specifies certain criteria for inclusion in the standards: knowledge of the law, procedure, integrity, impartiality, temperament, respect for litigants, respect for the rule of law, administrative skill, punctuality, and communication skills.

The performance commission is prohibited from evaluating judicial performance based upon substantive legal issues or opinions subject to standard appellate review.

(b) Requires the commission to establish procedures for collecting information and conducting reviews, and to periodically review the performance of each judge.

**Subd. 6. Surveys.** (a) Requires anonymous survey forms to be distributed to a representative sampling of attorneys, litigants, other judges, and other persons who have been in direct contact with the judge being evaluated and have knowledge of the judge's performance. The surveys must be distributed once midway through a judge's term, and again at least nine months before a judge's retention election.

(b) The performance commission may employ or contract with qualified individuals to administer the survey.

(c) The survey must seek evaluation consistent with the performance standards for judges, and must solicit narrative comments on a judge's performance.

**Subd. 7. Midterm evaluation.** Requires the performance evaluation commission to conduct a formal evaluation of a judge's performance as close as practicable to half-way through the judge's term in office. The evaluation must provide feedback to the judge and provide an opportunity for improvement.

**Subd. 8. Retention-year evaluation.** Requires a judge seeking to be retained to notify the commission at least one year before expiration of the judge's term. Upon notification, the judge shall be evaluated, and declared to be "well qualified," "qualified" or "unqualified" for office. An "unqualified" declaration does not prohibit the judge from pursuing retention by the voters. Public comment must be requested,

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and hearings are required before a determination as to whether a judge does or does not meet the established standards for judicial performance. Hearings may be conducted by a panel of members, as provided in subdivision 9.

A judge who does not intent to seek retention may waive the evaluation. Upon waiver, the judge is not permitted to file an affidavit of candidacy to be retained, and may not be appointed by the governor to fill the resulting vacancy.

**Subd. 9. Evaluation panels.** (a) Provides that an evaluation panel consists of five members. Each of the three appointing branches of government must have an appointee on every panel, but members are otherwise to be chosen randomly.

The evaluation panel must report its results to the full commission. If a judge is declared by the panel to be unqualified, the full commission must conduct a review. A review of a panel's decision is also required if one member of the panel, or three members of the full commission, request a full review within 15 days after the panel's report. The commission may overturn a panel's decision; if a panel's decision is not reviewed, the panel's conclusion is considered final.

(b) If an evaluation is reviewed by the full commission, the commission must provide notice to the affected judge. The judge has the right to submit written comments to the full commission and to appear and be heard prior to the commission's final vote.

**Subd. 10. Publication of results.** Requires the commission to compile a factual report on each judge standing for retention and to make the report available to the public one month before the deadline to file an affidavit of candidacy for retention.

- 16 Performance Evaluation Commission; first meeting.** Establishes the procedure for convening the first meeting of the independent judicial performance commission. The first meeting must be held no later than August 1, 2015. A transition schedule for evaluating current judges is also provided.
- 17 Repealers.** Repeals the following sections of law:
- 204B.36, subd. 5: Requires that a judicial election ballot designate the incumbent, if applicable.
- 204D.14, subd. 3: Specifies the order of offices on a ballot in which some judicial races are uncontested.
- 18 Effective Date.** Provides that Article 2 is effective July 1, 2015, if the constitutional amendment in article 1 is adopted. A constitutional amendment is effective upon a majority vote of the voters to approve the amendment.