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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-FIFTH
SESSION**

HOUSE FILE NO. 3023

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The bill was read for the first time and referred to the Committee on Governmental Operations, Reform, Technology and Elections

A bill for an act

relating to elections; proposing an amendment to the Minnesota Constitution, article VI, sections 7 and 8; establishing and modifying procedures for filling judicial vacancies; creating a judicial performance commission; creating a commission on appellate judicial selection; amending Minnesota Statutes 2006, sections 10A.01, subdivisions 7, 10, 15; 204B.06, subdivision 6; 204B.34, subdivision 3; 204B.36, subdivision 4; 480B.01, subdivision 11; proposing coding for new law in Minnesota Statutes, chapters 204D; 480B; repealing Minnesota Statutes 2006, sections 204B.36, subdivision 5; 204D.14, subdivision 3.

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

ARTICLE 1

CONSTITUTIONAL AMENDMENT

Section 1. CONSTITUTIONAL AMENDMENTS PROPOSED.

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, article VI, section 7, will read:

Sec. 7. ~~The term of office of all judges shall be six years and until their successors are qualified. They~~ Following appointment by the governor, each judge shall initially hold office for a term ending December 31 following the next regularly scheduled general election held more than three years after the appointment. Thereafter, the term of office shall be eight years and until a successor is appointed and qualified and shall commence on the first day of January following the judge's retention election. Judges' retention shall be ~~elected~~ determined by the voters from the area which they ~~are to~~ serve, in the manner provided by law. A judicial performance commission shall evaluate in a nonpartisan manner the performance of judges according to criteria that the commission develops and

2.1 publishes, and such other criteria as may be established by law, and its performance rating
2.2 for judges shall appear on the ballot in the manner provided by law.

2.3 article VI, section 8, will read:

2.4 Sec. 8. Whenever there is a vacancy in the office of judge, the governor shall appoint
2.5 ~~in the manner provided by law~~ a qualified person to fill the vacancy ~~until a successor is~~
2.6 ~~elected and qualified. The successor shall be elected for a six year term at the next general~~
2.7 ~~election occurring more than one year after the appointment.~~ from a list of candidates
2.8 nominated by a selection commission, in the manner provided by law.

2.9 Sec. 2. **SUBMISSION TO VOTERS.**

2.10 The proposed amendment must be submitted to the people at the 2008 general
2.11 election. The question submitted must be:

2.12 "Shall the Minnesota Constitution be amended to provide that judges shall be
2.13 appointed by the governor from a list of names submitted by a selection commission,
2.14 evaluated based on performance after an initial term in office, and then retained or
2.15 removed regularly based on a decision by the voters?

2.16 Yes
2.17 No"

2.18 **ARTICLE 2**
2.19 **STATUTORY PROVISIONS**

2.20 Section 1. Minnesota Statutes 2006, section 10A.01, subdivision 7, is amended to read:

2.21 Subd. 7. **Ballot question.** "Ballot question" means a question or proposition that
2.22 is placed on the ballot and that may be voted on by all voters of the state. "Promoting
2.23 or defeating a ballot question" includes activities related to qualifying the question for
2.24 placement on the ballot. A ballot question does not include a judicial retention election.

2.25 Sec. 2. Minnesota Statutes 2006, section 10A.01, subdivision 10, is amended to read:

2.26 Subd. 10. **Candidate.** "Candidate" means an individual who seeks nomination
2.27 or election as a state constitutional officer, or legislator, or judge retention in a judicial
2.28 office. An individual is deemed to seek nomination or election if the individual has taken
2.29 the action necessary under the law of this state to qualify for nomination or election, has
2.30 received contributions or made expenditures in excess of \$100, or has given implicit or
2.31 explicit consent for any other person to receive contributions or make expenditures in
2.32 excess of \$100, for the purpose of bringing about the individual's nomination or election.

3.1 A candidate remains a candidate until the candidate's principal campaign committee is
 3.2 dissolved as provided in section 10A.24.

3.3 Sec. 3. Minnesota Statutes 2006, section 10A.01, subdivision 15, is amended to read:

3.4 Subd. 15. **Election.** "Election" means a primary, special primary, general, ~~or~~
 3.5 special, or retention election.

3.6 Sec. 4. Minnesota Statutes 2006, section 204B.06, subdivision 6, is amended to read:

3.7 Subd. 6. **Judicial retention candidates; designation of term office.** ~~An individual~~
 3.8 A justice or judge who files as a retention candidate for the office of chief justice or
 3.9 associate justice of the Supreme Court, judge of the Court of Appeals, or judge of the
 3.10 district court shall state in the affidavit of candidacy the office of the particular justice or
 3.11 judge for which the individual is a retention candidate. The individual shall be a retention
 3.12 candidate only for the office identified in the affidavit. Each justice of the Supreme
 3.13 Court and each Court of Appeals and district court judge is deemed to hold a separate
 3.14 nonpartisan office.

3.15 Sec. 5. Minnesota Statutes 2006, section 204B.34, subdivision 3, is amended to read:

3.16 Subd. 3. **Judicial elections.** When one or more justices of the Supreme Court or
 3.17 judges of the Court of Appeals or of a district court ~~are to be nominated at the same~~
 3.18 ~~primary or elected at the same general election~~ have filed for retention election, the
 3.19 notice of election shall state the name of each justice or judge ~~whose successor is to~~
 3.20 ~~be nominated or elected~~ seeking retention.

3.21 Sec. 6. Minnesota Statutes 2006, section 204B.36, subdivision 4, is amended to read:

3.22 Subd. 4. **Judicial retention candidates.** ~~The official ballot shall contain the names~~
 3.23 ~~of all candidates for each judicial office and shall state the number of those candidates for~~
 3.24 ~~whom a voter may vote.~~ (a) The official ballot shall contain the names of all justices or
 3.25 judges seeking to retain their office. Each seat for an associate justice, associate judge, or
 3.26 judge of the district court must be numbered. The words "SUPREME COURT," "COURT
 3.27 OF APPEALS," and "(number) DISTRICT COURT" must be printed above the respective
 3.28 judicial office groups on the ballot. The title of each judicial office shall be printed on
 3.29 the official ~~primary and~~ general election ballot as follows:

3.30 ~~(a)~~ (1) In the case of the Supreme Court:

3.31 "Chief justice";

3.32 "Associate justice (number)";

4.1 ~~(b)~~(2) In the case of the Court of Appeals:

4.2 "Judge (number)"; or

4.3 ~~(c)~~(3) In the case of the district court:

4.4 "Judge (number)."

4.5 (b) A judicial retention election shall be placed on the ballot as a question, as
 4.6 provided in subdivision 3. The question shall appear in substantially the following form:
 4.7 "Shall (name of judge) of the (district court, court of appeals, or supreme court)
 4.8 be retained in office? The Judicial Performance Commission has rated this judge
 4.9 (qualified, not qualified)."

4.10 **Sec. 7. [204D.30] RETENTION OF JUDGES.**

4.11 (a) Within the time period established by section 204B.09, a judge seeking to retain
 4.12 judicial office shall file an affidavit of candidacy with the secretary of state. All judges
 4.13 who have filed an affidavit of candidacy as provided in this section shall be placed on
 4.14 the appropriate official ballot at the next regular general election under a nonpartisan
 4.15 designation in the form provided in section 204B.36, subdivision 4.

4.16 (b) If a majority of those voting on the question votes "No," then upon the expiration
 4.17 of the term for which the judge was serving, a vacancy shall exist, which shall be filled as
 4.18 provided in chapter 480B. If a majority of those voting on the question vote "Yes," the
 4.19 judge shall remain in office for an eight-year term, subject to removal as provided by the
 4.20 Minnesota Constitution.

4.21 (c) A judge seeking to retain judicial office shall be considered a candidate for
 4.22 election to that office. A judicial retention election is not a ballot question for the purposes
 4.23 of the Minnesota election law.

4.24 Sec. 8. Minnesota Statutes 2006, section 480B.01, subdivision 11, is amended to read:

4.25 ~~Subd. 11. **Nominees to governor.** Within 60 days after the receipt of a notice of~~
 4.26 ~~a judicial vacancy, the committee shall recommend to the governor no fewer than three~~
 4.27 ~~and no more than five nominees for each judicial vacancy. The names of the nominees~~
 4.28 ~~must be made public. The governor may fill the vacancy from the nominees recommended~~
 4.29 ~~by the commission. If the governor declines to select a nominee to fill the vacancy from~~
 4.30 ~~the list of nominees, or if no list is submitted to the governor under this subdivision,~~
 4.31 ~~the governor may select a person to fill the vacancy without regard to the commission's~~
 4.32 ~~recommendation. If fewer than 60 days remain in the term of office of a governor who~~
 4.33 ~~will not succeed to another term, the governor may fill a vacancy without waiting for the~~
 4.34 ~~commission to recommend a list of nominees. Within 60 days from the occurrence of a~~

5.1 vacancy in the office of judge, the commission on judicial selection shall submit to the
5.2 governor the names of three candidates nominated by the commission for the vacancy.
5.3 The names of the nominees must be made public. The governor shall appoint a qualified
5.4 person to fill the vacancy from that list of three candidates or may direct the commission
5.5 to nominate three additional candidates from which the governor shall appoint a qualified
5.6 person to fill the vacancy.

5.7 **Sec. 9. [480B.02] COMMISSION ON APPELLATE JUDICIAL SELECTION.**

5.8 **Subdivision 1. Commission on Appellate Judicial Selection.** (a) A commission on
5.9 Appellate Judicial Selection is established in the judicial branch. The commission shall be
5.10 a nonpartisan commission composed of nine commissioners. To the extent practicable, the
5.11 commission shall conduct meetings and perform other procedural functions following the
5.12 procedures as established in section 480B.01.

5.13 (b) All members of the commission must be residents of the state of Minnesota
5.14 at the time of their appointment and for the duration of their term. Members of the
5.15 commission may not hold judicial office, or serve as a public official as defined in section
5.16 10A.01, subdivision 35, while a member of the commission. Attorney members of the
5.17 commission must have resided in Minnesota and have been admitted to practice before the
5.18 Minnesota Supreme Court for not less than five years. Commissioners shall be eligible for
5.19 reappointment up to two additional full terms. Members of the commission who would
5.20 otherwise be eligible to hold judicial office may not be considered or appointed to fill a
5.21 judicial vacancy while they are members of the commission or for one year following the
5.22 end of membership on the commission.

5.23 **Subd. 2. Commission members.** (a) Members of the commission shall be
5.24 appointed and serve as follows:

5.25 (1) the governor shall appoint five members of the commission, one of whom must
5.26 be appointed to serve as commission chair. At least two appointees must be attorneys,
5.27 and at least two appointees must be nonattorneys. Gubernatorial appointees shall serve on
5.28 the commission until the governor who made the appointment leaves office or for a term
5.29 of four years, whichever comes first; and

5.30 (2) the chief justice shall appoint four members of the commission, two of whom
5.31 shall be attorneys and two of whom shall be nonattorneys. Appointees shall serve on the
5.32 commission for a four-year term.

5.33 (b) In making appointments, the governor and the chief justice must consider the
5.34 diversity of the state's population, as well as the importance of balanced geographic
5.35 representation, and appoint individuals of outstanding competence and reputation. The

6.1 governor and chief justice should consult with one another to ensure the requirements
6.2 of this paragraph are met.

6.3 (c) A member may be removed by the appointing authority at any time (1) for cause,
6.4 after notice and hearing, or (2) after missing three consecutive meetings. The chair of the
6.5 board shall inform the appointing authority of a member missing the three consecutive
6.6 meetings. After the second consecutive missed meeting and before the next meeting, the
6.7 secretary of the board shall notify the member in writing that the member may be removed
6.8 for missing the next meeting. In the case of a vacancy on the board, the appointing
6.9 authority shall appoint a person to fill the vacancy for the remainder of the unexpired term.

6.10 (d) Members of the commission may be reimbursed for expenses in the manner and
6.11 amount provided in section 43A.18, subdivision 2.

6.12 (e) Initial appointments to the commission shall be made as follows:

6.13 (1) the governor shall appoint two attorneys, two nonattorneys, and the commission
6.14 chair, to serve four-year terms; and

6.15 (2) the chief justice shall appoint one attorney and one nonattorney member to serve
6.16 a two-year term; and one attorney and one nonattorney to serve a four-year term.

6.17 Subd. 3. **Nominations.** (a) Within 60 days from the occurrence of a vacancy in
6.18 the office of appellate judge, the Appellate Judicial Merit Selection Commission shall
6.19 submit to the governor the names of three candidates nominated by the commission for the
6.20 vacancy. The governor shall appoint a qualified person to fill the vacancy from that list of
6.21 three candidates or may direct the commission to nominate three additional candidates
6.22 from which the governor shall appoint a qualified person to fill the vacancy.

6.23 (b) The commission must nominate qualified persons to fill a judicial vacancy based
6.24 on the following criteria: integrity, legal knowledge, communication skills, judicial
6.25 temperament, the ability to promote trust and confidence in the judiciary, common sense,
6.26 experience, and diversity. The principal consideration in nominating a candidate for
6.27 a vacancy shall be merit. The commission must make nominations in an impartial and
6.28 objective manner without regard for the political affiliation of the nominee or the governor.

6.29 **Sec. 10. [480B.03] JUDICIAL PERFORMANCE COMMISSION.**

6.30 Subdivision 1. **Purpose of commission.** A Judicial Performance Commission is
6.31 established in the judicial branch. After public hearings, the commission shall adopt and
6.32 administer for all judges a process for evaluating judicial performance. The performance
6.33 review process must be designed to assist voters in evaluating the performance of judges
6.34 standing for retention, facilitate self-improvement of all judges, and promote the public
6.35 accountability of the judiciary.

7.1 Subd. 2. **Commission members.** (a) The Judicial Performance Commission shall
7.2 be composed of 30 members, including two members from each judicial district, and ten
7.3 statewide members. All members of the commission must be residents of Minnesota at
7.4 the time of their appointment and for the duration of their term. Members appointed to
7.5 serve a judicial district must reside in the district they serve. A member of the commission
7.6 may not hold judicial office or serve as a public official, as defined in section 10A.01,
7.7 subdivision 35, while a member of the commission. Attorney members must have resided
7.8 in Minnesota and have been admitted to practice before the Minnesota Supreme Court for
7.9 not less than five years.

7.10 (b) Members of the commission shall be appointed and serve as follows:

7.11 (1) the governor shall appoint two attorneys and three nonattorneys to serve in a
7.12 statewide capacity, and one nonattorney to serve each judicial district. Gubernatorial
7.13 appointees shall serve on the commission until the governor who made the appointment
7.14 leaves office or for a term of four years, whichever comes first;

7.15 (2) the chief justice shall appoint two attorneys and three nonattorneys to serve in a
7.16 statewide capacity and one attorney to serve each judicial district. The chief justice shall
7.17 select one of the appointees to serve as chair of the commission. Appointees shall serve on
7.18 the commission for a four-year term; and

7.19 (3) members of the commission shall be eligible for reappointment up to two
7.20 additional full terms.

7.21 (c) In making appointments, the governor and the chief justice must consider the
7.22 diversity of the state's population, as well as the importance of balanced geographic
7.23 representation, and appoint individuals of outstanding competence and reputation. The
7.24 governor and chief justice should consult with one another to ensure the requirements
7.25 of this paragraph are met.

7.26 (d) Members shall perform their duties in an impartial and objective manner and
7.27 shall base their recommendations solely upon matters that are in the record developed
7.28 by the commission.

7.29 (e) A member may be removed by the appointing authority at any time (1) for cause,
7.30 after notice and hearing, or (2) after missing three consecutive meetings. The chair of the
7.31 board shall inform the appointing authority of a member missing the three consecutive
7.32 meetings. After the second consecutive missed meeting and before the next meeting, the
7.33 secretary of the board shall notify the member in writing that the member may be removed
7.34 for missing the next meeting. In the case of a vacancy on the board, the appointing
7.35 authority shall appoint a person to fill the vacancy for the remainder of the unexpired term.

8.1 (f) Members of the commission may be reimbursed for expenses in the manner and
8.2 amount provided in section 43A.18, subdivision 2.

8.3 Subd. 3. **Meetings.** All meetings of the Judicial Performance Commission are
8.4 subject to the requirements of chapter 13D, except that the commission may close a
8.5 meeting and meet in executive session to discuss (1) whether a judge meets or does not
8.6 meet judicial performance standards; (2) a judge's written responses to a finding that the
8.7 judge does not meet judicial performance standards; (3) a judge's appearance before the
8.8 commission; or (4) other matters that are made not public by these provisions, court rules,
8.9 or by law. The substance of deliberations in executive session may not be disclosed.
8.10 The commission may meet in executive session at any time upon a majority vote of the
8.11 commission members then in attendance. All voting must be conducted in public session.

8.12 Subd. 4. **Authority of commission.** (a) The Judicial Performance Commission shall
8.13 develop written standards, subject to approval by the supreme court, by which judicial
8.14 performance is to be evaluated. The standards shall be periodically updated and must
8.15 include knowledge of the law, procedure, integrity, impartiality, temperament, respect for
8.16 litigants, respect for the rule of law, administrative skill, punctuality, and communication
8.17 skills. The commission may not evaluate judicial performance based on substantive legal
8.18 issues or opinions subject to standard appellate processes.

8.19 (b) The commission shall establish procedures for collecting information and
8.20 conducting reviews and shall create and implement a program of periodic review of the
8.21 performance of each judge. The commission must request public comment and hold
8.22 hearings on the performance of all judges prior to the commission's final determination as
8.23 to whether a judge meets or does not meet judicial performance standards.

8.24 Subd. 5. **Surveys.** (a) Midway through a judge's term and again no fewer than nine
8.25 months before the date of the election for retention of the judge's position, anonymous
8.26 survey forms eliciting performance evaluations shall be distributed to attorneys, litigants,
8.27 other judges, and other persons who have been in direct contact with each judge being
8.28 evaluated and who have direct knowledge of the judge's judicial performance during the
8.29 evaluation period.

8.30 (b) The Judicial Performance Commission shall employ qualified individuals to
8.31 prepare survey forms, process the survey responses, and compile the statistical reports of
8.32 the survey results in a manner designed to ensure confidentiality and accuracy.

8.33 (c) The survey forms shall seek evaluations in accordance with the written
8.34 performance standards approved by the supreme court and must solicit narrative comments
8.35 regarding the judge's performance. Narrative comments shall be classified as private data
8.36 on the judge being evaluated, pursuant to section 13.02, subdivision 12. In each election

9.1 year, prior to making its final evaluation, the commission shall request written public
9.2 comments and hold public hearings with respect to judges standing for retention.

9.3 Subd. 6. **Evaluation.** (a) In April of each general election year, the Judicial
9.4 Performance Commission shall disseminate a compiled data report to the judge being
9.5 reviewed. The data report shall include the survey results, narratives, written public
9.6 comments, and testimony from the public hearings. Based on this information, the
9.7 commission shall make a preliminary finding as to whether the judge meets or does not
9.8 meet judicial performance standards.

9.9 (b) The commission shall provide written notice to any judge standing for election
9.10 who has been found not to meet judicial performance standards. The judge shall have the
9.11 right to submit written comments to the commission and to appear and be heard by the
9.12 commission prior to the final vote of the commission.

9.13 (c) In each general election year, the commission shall vote in a public meeting on
9.14 whether a judge who is standing for retention meets or does not meet judicial performance
9.15 standards. Following the final vote, the commission shall compile a factual report on
9.16 the judicial performance of each judge standing for retention and shall make the report
9.17 available to the public one month before the time period established in section 204B.09
9.18 for filing an affidavit of candidacy with the secretary of state.

9.19 **Sec. 11. [480B.05] JUDICIAL RETENTION ELECTIONS.**

9.20 Judicial retention elections shall be conducted consistent with the procedures
9.21 established by law for the administration of state general elections. Judges standing for
9.22 retention shall be placed on the ballot as provided in section 204D.30.

9.23 **Sec. 12. REPEALER.**

9.24 Minnesota Statutes 2006, sections 204B.36, subdivision 5; and 204D.14, subdivision
9.25 3, are repealed.

9.26 **Sec. 13. EFFECTIVE DATE.**

9.27 Article 2 is effective upon adoption of the constitutional amendment proposed in
9.28 article 1.