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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-SIXTH  
SESSION

**HOUSE FILE No. 224**

January 22, 2009

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

1.1 A bill for an act  
1.2 relating to judicial selection; proposing an amendment to the Minnesota  
1.3 Constitution, article VI, sections 7 and 8; establishing retention elections for  
1.4 judges; creating a judicial performance commission; amending Minnesota  
1.5 Statutes 2008, sections 10A.01, subdivisions 7, 10, 15; 204B.06, subdivision 6;  
1.6 204B.34, subdivision 3; 204B.36, subdivision 4; proposing coding for new law  
1.7 in Minnesota Statutes, chapters 204D; 480B; repealing Minnesota Statutes 2008,  
1.8 sections 204B.36, subdivision 5; 204D.14, subdivision 3.

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

1.10 **ARTICLE 1**  
1.11 **CONSTITUTIONAL AMENDMENT**

1.12 Section 1. **CONSTITUTIONAL AMENDMENT PROPOSED.**

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

1.15 Sec. 7. ~~The term of office of all judges shall be six years and until their successors are~~  
1.16 ~~qualified. They~~ Following appointment by the governor, each judge shall initially hold  
1.17 office for a term ending the first Monday of January following the next regularly scheduled  
1.18 general election held more than three years after the appointment. Thereafter, the judge's  
1.19 term of office shall be eight years and until a successor is appointed and qualified. Judges'  
1.20 retention shall be ~~elected~~ determined by the voters from the area which they are to serve,  
1.21 in the manner provided by law. A judicial performance commission shall evaluate in a  
1.22 nonpartisan manner the performance of judges according to criteria that the commission  
1.23 develops and publishes, and any such other criteria as may be established by law.

1.24 article VI, section 8, will read:

2.1 Sec. 8. Whenever there is a vacancy in the office of judge, the governor shall appoint  
 2.2 in the manner provided by law a qualified person to fill the vacancy ~~until a successor is~~  
 2.3 ~~elected and qualified. The successor shall be elected for a six year term at the next general~~  
 2.4 ~~election occurring more than one year after the appointment.~~

2.5 Sec. 2. **SUBMISSION TO VOTERS.**

2.6 The proposed amendment must be submitted to the people at the 2010 general  
 2.7 election. The question submitted must be:

2.8 "Shall the Minnesota Constitution be amended to preserve the independence of  
 2.9 Minnesota's judges by allowing voters to decide whether judges shall be retained in a  
 2.10 retention election, after a public performance evaluation by a nonpartisan panel?

2.11 Yes .....  
 2.12 No ....."

2.13 Sec. 3. **TRANSITION.**

2.14 Any judge currently seated or elected at the time the constitutional amendment  
 2.15 provided in section 1 is adopted shall complete the remainder of the judge's term as it  
 2.16 existed on November 1, 2010. Following completion of that term, the judge is subject to  
 2.17 the retention election process as provided in the constitution and may file for retention  
 2.18 following the procedures described in article 2.

2.19 **ARTICLE 2**

2.20 **STATUTORY PROVISIONS**

2.21 Section 1. Minnesota Statutes 2008, section 10A.01, subdivision 7, is amended to read:

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

2.27 Sec. 2. Minnesota Statutes 2008, section 10A.01, subdivision 10, is amended to read:

2.28 Subd. 10. **Candidate.** "Candidate" means an individual who seeks nomination  
 2.29 or election as a state constitutional officer, ~~or legislator, or judge~~ retention in a judicial  
 2.30 office. An individual is deemed to seek nomination or election if the individual has taken  
 2.31 the action necessary under the law of this state to qualify for nomination or election, has  
 2.32 received contributions or made expenditures in excess of \$100, or has given implicit or

3.1 explicit consent for any other person to receive contributions or make expenditures in  
 3.2 excess of \$100, for the purpose of bringing about the individual's nomination or election.  
 3.3 A candidate remains a candidate until the candidate's principal campaign committee is  
 3.4 dissolved as provided in section 10A.24.

3.5 Sec. 3. Minnesota Statutes 2008, section 10A.01, subdivision 15, is amended to read:

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

3.8 Sec. 4. Minnesota Statutes 2008, section 204B.06, subdivision 6, is amended to read:

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

3.17 Sec. 5. Minnesota Statutes 2008, section 204B.34, subdivision 3, is amended to read:

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

3.23 Sec. 6. Minnesota Statutes 2008, section 204B.36, subdivision 4, is amended to read:

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

3.32 ~~(a)~~ (1) in the case of the Supreme Court:

4.1 "Chief justice";  
 4.2 "Associate justice (number)";  
 4.3 ~~(b)~~ (2) in the case of the Court of Appeals;  
 4.4 "Judge (number)"; or  
 4.5 ~~(c)~~ (3) in the case of the district court;  
 4.6 "Judge (number)."

4.7 (b) A judicial retention election shall be placed on the ballot as a question, as  
 4.8 provided in subdivision 3. The question shall appear in substantially the following form:  
 4.9 "Shall ..... (name of judge) of the ..... (district court, Court of Appeals, or Supreme Court)  
 4.10 be retained in office?"

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

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

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

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

4.26 **Sec. 8. [480B.02] JUDICIAL PERFORMANCE COMMISSION.**

4.27 Subdivision 1. Purpose of commission. The Judicial Performance Commission is  
 4.28 established in the judicial branch. After public hearings, the commission shall adopt and  
 4.29 administer for all judges a process for evaluating judicial performance. The performance  
 4.30 review process must be designed to assist voters in evaluating the performance of judges  
 4.31 standing for retention, facilitate self-improvement of all judges, and promote the public  
 4.32 accountability of the judiciary.

4.33 Subd. 2. Commission members. (a) The Judicial Performance Commission shall  
 4.34 be composed of 24 members. All members of the commission must be residents of

5.1 Minnesota at the time of their appointment and for the duration of their term. Currently  
5.2 sitting judges and public officials, as defined in section 10A.01, subdivision 35, may not  
5.3 be appointed or serve on the commission. Members of the commission who are attorneys  
5.4 at the time of their appointment must have been admitted to practice before the Minnesota  
5.5 Supreme Court for not less than five years. Members of the commission shall be eligible  
5.6 for reappointment up to two additional full terms.

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

5.8 (1) the governor shall appoint a total of eight members, no more than four of whom  
5.9 may be attorneys at the time of their appointment. Gubernatorial appointees shall serve  
5.10 on the commission until the governor who made the appointment leaves office or for a  
5.11 term of four years, whichever comes first;

5.12 (2) the Supreme Court shall appoint a total of eight members. The court shall  
5.13 designate one of the appointees to serve as chair of the commission. No more than four of  
5.14 the appointees may be attorneys at the time of their appointment. The Supreme Court's  
5.15 appointees shall serve on the commission for a four-year term; and

5.16 (3) the legislature shall appoint a total of eight members, no more than four of  
5.17 whom may be attorneys at the time of their appointment. Legislative appointments shall  
5.18 be made sequentially as follows: the speaker of the house shall appoint one member, the  
5.19 majority leader of the senate shall appoint one member, the minority leader of the house  
5.20 of representatives shall appoint one member, and the minority leader of the senate shall  
5.21 appoint one member. After each legislative leader has made one appointment as provided  
5.22 in this clause, a second round of appointments shall be made in the same sequence.  
5.23 Legislative appointees shall serve on the commission for a two-year term.

5.24 (c) In making appointments, the governor, Supreme Court, and legislative leaders  
5.25 must consider the diversity of the state's population, as well as the importance of balanced  
5.26 geographic representation, and appoint individuals of outstanding competence and  
5.27 reputation. The governor, Supreme Court, and legislative leaders should consult with one  
5.28 another to ensure the requirements of this paragraph are met.

5.29 (d) Members shall perform their duties in an impartial and objective manner and  
5.30 shall base their recommendations solely upon matters that are in the record developed  
5.31 by the commission. A member who violates this paragraph may be removed from the  
5.32 commission by majority vote of the commission's membership.

5.33 (e) A member may be removed by the appointing authority at any time (1) for  
5.34 cause, after notice and hearing, or (2) after missing three consecutive meetings. The  
5.35 chair of the board shall inform the appointing authority of a member missing the three  
5.36 consecutive meetings. After the second consecutive missed meeting and before the next

6.1 meeting, the secretary of the board shall notify the member in writing that the member  
6.2 may be removed for missing the next meeting.

6.3 (f) In the case of a vacancy on the board, the authority who appointed the member  
6.4 whose seat has become vacant shall appoint a person to fill the vacancy for the remainder  
6.5 of the unexpired term.

6.6 (g) Commission members shall serve without compensation and may not be  
6.7 reimbursed for expenses associated with their work on the commission.

6.8 (h) The Supreme Court shall provide administrative staff and any other resources as  
6.9 needed by the commission.

6.10 Subd. 3. **Meetings and data.** All meetings of the Judicial Performance Commission  
6.11 are subject to the requirements of chapter 13D, except that a meeting held to evaluate the  
6.12 performance of a judge may only be closed to discuss issues related to the judge's health  
6.13 or allegations against the judge that may be defamatory in nature. Notwithstanding section  
6.14 13.90, and except as otherwise provided in this section, data collected by the commission  
6.15 is public data pursuant to section 13.03, subdivision 1.

6.16 Subd. 4. **Standards and procedures.** (a) The Judicial Performance Commission  
6.17 shall develop written standards, subject to approval by the Supreme Court, by which  
6.18 judicial performance is to be evaluated. The standards shall be periodically updated and  
6.19 must include knowledge of the law, procedure, integrity, impartiality, temperament,  
6.20 respect for litigants, respect for the rule of law, administrative skill, punctuality, and  
6.21 communication skills. The commission may not evaluate judicial performance based on  
6.22 substantive legal issues or opinions subject to standard appellate processes.

6.23 (b) The commission shall adopt procedures for collecting information and  
6.24 conducting reviews and shall create and implement a program of periodic review of the  
6.25 performance of each judge. The commission must request public comment on these  
6.26 procedures prior to their adoption.

6.27 Subd. 5. **Surveys.** (a) Midway through a judge's term and again no fewer than nine  
6.28 months before the date of the election for retention of the judge's position, the commission  
6.29 must distribute anonymous survey forms eliciting performance evaluations of the judge to  
6.30 a representative sampling of attorneys, litigants, other judges, and other persons who have  
6.31 been in direct contact with the judge being evaluated and who have direct knowledge of  
6.32 the judge's judicial performance during the evaluation period.

6.33 (b) The Judicial Performance Commission must employ or contract with qualified  
6.34 individuals to prepare survey forms, process responses, and compile the statistical reports  
6.35 of the survey results in a manner that ensures confidentiality and accuracy.

7.1 (c) Each survey conducted shall seek evaluations in accordance with the written  
7.2 performance standards approved by the Supreme Court and must solicit narrative  
7.3 comments regarding the judge's performance. Narrative comments contained in a survey  
7.4 response shall be classified as private data on the judge, as defined in section 13.02,  
7.5 subdivision 12.

7.6 Subd. 6. **Midterm evaluation.** The commission shall evaluate each judge halfway  
7.7 through the judge's term, as nearly as practicable, to provide feedback to the judge about  
7.8 the judge's performance and to give the judge an opportunity for improvement. The  
7.9 commission shall adopt procedures for conducting the midterm evaluation.

7.10 Subd. 7. **Retention-year evaluation.** (a) In each year in which a judge has the  
7.11 opportunity to file as a candidate for retention, the Judicial Performance Commission must  
7.12 conduct a final evaluation of the judge and determine whether the judge meets or does not  
7.13 meet judicial performance standards. Upon completion of the evaluation, the commission  
7.14 must rate the judge "well-qualified," "qualified," or "unqualified" for office. A rating of  
7.15 "unqualified" does not prohibit a judge from seeking retention by the voters.

7.16 (b) The final evaluation of a judge must include a public hearing and an opportunity  
7.17 for submission of written public comments on the performance of a judge standing for  
7.18 retention. Prior to accepting public comment and conducting a hearing, the commission  
7.19 must notify each judge to be evaluated of the process for conducting the evaluation and  
7.20 the right of the judge to submit written comments and appear in person at the hearing.  
7.21 The hearing and evaluation may be conducted by a panel of commission members, as  
7.22 provided in subdivision 8.

7.23 (c) A judge who does not intend to seek retention may waive the final evaluation  
7.24 process by providing written notice to the commission affirming the judge's intention to  
7.25 not file as a retention candidate for their office.

7.26 Subd. 8. **Evaluation panels; review by full commission.** (a) The evaluation of a  
7.27 judge may be conducted by an evaluation panel. An evaluation panel shall consist of five  
7.28 members, including at least one member appointed by each branch of government, but  
7.29 otherwise chosen randomly. A panel must report its results to the full commission. The  
7.30 full commission shall review a panel's evaluation if the panel rates a judge unqualified,  
7.31 or if one panelist or three members of the commission request a review within 15 days  
7.32 after the panel makes its report. The commission may overturn a panel's rating. If a  
7.33 panel's report and rating is not reviewed, the determination of the panel shall be final.  
7.34 Decisions of an evaluation panel or the full commission regarding a judge's performance  
7.35 are not subject to judicial review.

8.1 (b) If an evaluation is reviewed by the full commission, the commission shall  
8.2 provide written notice to the affected judge. The judge shall have the right to submit  
8.3 written comments to the commission and to appear and be heard by the commission prior  
8.4 to a final vote of the commission members regarding the judge's performance.

8.5 Subd. 9. **Publication of evaluation results.** Following the final evaluation of a  
8.6 judge, the commission shall compile a factual report on the judicial performance of each  
8.7 judge intending to stand for retention, including the final rating assigned to the judge's  
8.8 performance. The report must be made available to the public at least one month before  
8.9 the time period established in section 204B.09 for filing an affidavit of candidacy with  
8.10 the secretary of state.

8.11 **Sec. 9. [480B.03] JUDICIAL RETENTION ELECTIONS.**

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

8.15 **Sec. 10. [480B.04] REQUIREMENTS FOR SERVICE ON COMMISSIONS.**

8.16 Subdivision 1. **Service on multiple commissions prohibited.** A person may not  
8.17 simultaneously serve on two or more commissions established under this chapter.

8.18 Subd. 2. **Service until appointment of successors.** Members of commissions  
8.19 established under this chapter continue to serve until their successors have been appointed  
8.20 and qualified.

8.21 **Sec. 11. [480B.05] TELEPHONIC OR ELECTRONIC PARTICIPATION IN**  
8.22 **MEETINGS.**

8.23 (a) If compliance with section 13D.02 is impractical, any of the commissions  
8.24 established under this chapter may conduct a meeting of its members by telephone or other  
8.25 electronic means, so long as the following conditions are met:

8.26 (1) all members of the commission participating in the meeting, wherever their  
8.27 physical location, can hear one another and can hear all discussion and testimony;

8.28 (2) all members of the public present at the regular meeting location can clearly hear  
8.29 all discussion and testimony and all votes of members;

8.30 (3) at least one member of the commission is physically present at the regular  
8.31 meeting location; and



9.1 (4) all votes committing funds, finalizing recommendations, and approving contracts  
9.2 are conducted by roll call, so each member's vote on each issue can be identified and  
9.3 recorded.

9.4 (b) Each member of the commission participating in a meeting by telephone or  
9.5 other electronic means is considered present at the meeting for purposes of determining  
9.6 a quorum and participating in all proceedings. If telephone or other electronic means is  
9.7 used to conduct a meeting, the commission, to the extent practical, shall allow a person to  
9.8 monitor the meeting electronically from a remote location. The commission may require  
9.9 the person making such a connection to pay for documented marginal costs that the  
9.10 commission incurs as a result of the additional connection. If telephone or other electronic  
9.11 means is used to conduct a regular, special, or emergency meeting, the commission  
9.12 shall provide notice of the regular meeting location, of the fact that some members may  
9.13 participate by telephone or other electronic means, and of whether and how a person may  
9.14 monitor the meeting electronically from a remote location. The timing and method of  
9.15 providing notice is governed by section 13D.04.

9.16 **Sec. 12. JUDICIAL PERFORMANCE COMMISSION; FIRST MEETING;**  
9.17 **TRANSITION.**

9.18 (a) Initial appointments must be made to the Judicial Performance Commission on  
9.19 July 1, 2011.

9.20 (b) Initial appointees shall serve for a term ending January 15, 2013, and may be  
9.21 considered for reappointment as provided in this article at that time. The chair of the  
9.22 commission must convene the first full meeting of the commission no later than August 1,  
9.23 2011.

9.24 (c) The commission is only required to conduct a final retention-year evaluation of  
9.25 each judge whose term expires on or before January 7, 2013, but may conduct an initial  
9.26 evaluation of these judges to provide an opportunity for improvement if the commission  
9.27 determines that it is prepared and equipped to do so. Judges who take office or who begin  
9.28 a new term after June 30, 2011, are subject to both the midterm and final retention-year  
9.29 evaluations required by this article.

9.30 **Sec. 13. REPEALER.**

9.31 Minnesota Statutes 2008, sections 204B.36, subdivision 5; and 204D.14, subdivision  
9.32 3, are repealed.

9.33 **Sec. 14. EFFECTIVE DATE.**

- 10.1            This article is effective July 1, 2011, if the constitutional amendment in article  
10.2 1 is adopted. However, if the constitutional amendment is adopted, the governor and  
10.3 Supreme Court may immediately undertake any procedure necessary to consider and  
10.4 select potential appointees.