

SENATE BILL NO. 374

INTRODUCED BY M. WHEAT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO THE
5 SELECTION OF SUPREME COURT JUSTICES; PROVIDING THAT ALL SUPREME COURT JUSTICES ARE
6 ELECTED AS ASSOCIATE JUSTICES; PROVIDING THAT THE OFFICE OF CHIEF JUSTICE OF THE
7 SUPREME COURT SHALL ROTATE AMONG ALL JUSTICES; AMENDING SECTIONS 3-1-607, 3-1-608,
8 3-1-1602, 3-2-101, 13-12-207, 13-14-211, 13-14-212, AND 22-1-502, MCA; AND PROVIDING A DELAYED
9 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 **Section 1.** Section 3-1-607, MCA, is amended to read:
14 **"3-1-607. Supreme court justice or district court judge candidacy for nonjudicial office --**
15 **resignation required.** (1) If a person occupying the office of ~~chief justice or associate~~ justice of the supreme
16 court or judge of a district court of the state of Montana becomes a candidate for election to any elective office
17 under the laws of the state of Montana other than a judicial position, ~~he~~ the person shall immediately, and in any
18 event at or before the time when ~~he~~ the person must file as a candidate for ~~such the~~ office in any primary or
19 special or general election, resign from ~~his the~~ office of ~~chief justice, associate~~ justice, or district judge.
20 (2) The resignation becomes effective immediately upon its delivery to the proper officer or superior.
21 (3) The resignation requirement applies except when the person is a bona fide candidate for reelection
22 to the identical office then occupied by ~~him~~ the person or for another judicial position."

23
24 **Section 2.** Section 3-1-608, MCA, is amended to read:
25 **"3-1-608. Forced vacancy.** In the event of a failure to resign, the office of ~~chief justice, associate~~
26 justice, or district judge automatically becomes vacant and the former occupant has no further right, power, or
27 authority ~~therein~~ in the office for any purpose and no right to any emoluments ~~thereof~~ of the office,
28 notwithstanding the fact that a successor is not appointed or elected. The vacancy becomes operative to deprive
29 the person of the emoluments of the office in order to carry out the policy of ~~this section and~~ 3-1-607 and this
30 section."

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2 **Section 3.** Section 3-1-1602, MCA, is amended to read:

3 **"3-1-1602. District court council -- appointment -- composition -- duties -- staggered terms -- staff.**

4 (1) There is a district court council. The council must be composed of nine members as follows:

5 (a) the chief justice of the supreme court or a designee of the chief justice;

6 (b) four district court judges elected by district court judges, one of whom must be from a judicial district
7 that does not contain a first-class city as provided in 7-1-4111; and

8 (c) the following ex officio, nonvoting members appointed by the supreme court:

9 (i) one chief juvenile probation officer nominated by the Montana juvenile probation officers association;

10 (ii) one clerk of the district court nominated by the Montana association of clerks of district courts;

11 (iii) one county commissioner nominated by the Montana association of counties; and

12 (iv) one court reporter nominated by the Montana court reporters association.

13 (2) The chief justice or the chief justice's designee shall serve as the presiding officer of the council and
14 shall appoint a vice presiding officer to act in the absence of the presiding officer.

15 (3) The district court council shall develop and adopt policies and procedures, subject to review by the
16 supreme court, to administer the state funding of district courts. The policies and procedures must address but
17 not be limited to the following issues related to district courts:

18 (a) workload;

19 (b) resource allocation among the district courts;

20 (c) hiring policies;

21 (d) court procedures;

22 (e) information technology;

23 (f) for court reporters, work schedules, transcript fees, and equipment; and

24 (g) other issues regarding the state funding of district courts.

25 (4) Each district court judge shall retain the inherent power to select and appoint the judge's own
26 necessary assistants and employees and to direct the performance of their duties.

27 (5) The chief justice of the supreme court shall serve on the council during the rotational term of election
28 ~~or appointment~~ as chief justice. Other members shall serve staggered 3-year terms.

29 (6) The court administrator shall provide sufficient support to the council to allow it to carry out its
30 statutory duties.

1 (7) The council shall provide reports to the legislature and supreme court upon request."
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Section 4. Section 3-2-101, MCA, is amended to read:

4 **"3-2-101. Number, election, and term of office.** (1) The supreme court consists of a chief justice and
5 six associate seven justices who are elected by the qualified electors of the state at large at the general state
6 elections next preceding the expiration of the terms of office of their predecessors, respectively, and hold their
7 offices for the term of 8 years, as provided in 3-2-103, from and after the first Monday of January next
8 succeeding following their election.

9 (2) The office of chief justice must be rotated among the justices on a biennial basis. Beginning January
10 5, 2009, the justice who is senior in continuous term of service must be chief justice, and in case two or more
11 have continuously served during the same period, the senior in age of these is chief justice. The chief justice
12 shall hold the office for 2 years, at which time the justice who is next senior in continuous term of service
13 becomes chief justice. A justice may decline or resign from the office of chief justice without resigning from the
14 court. Upon declination or resignation, the justice who is next senior in continuous term of service becomes chief
15 justice. During incapacity of a chief justice, the duties, powers, and emoluments of the office devolve upon the
16 justice who is next senior in continuous service."

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18 **Section 5.** Section 13-12-207, MCA, is amended to read:

19 **"13-12-207. Order of placement.** (1) The order on the ballot for state and national offices must be as
20 follows:

21 (a) If the election is in a year in which a president of the United States is to be elected, in spaces
22 separated from the balance of the party tickets by a heavy black line must be the names and spaces for voting
23 for candidates for president and vice president. The names of candidates for president and vice president for
24 each political party must be grouped together.

25 (b) United States senator;

26 (c) United States representative;

27 (d) governor and lieutenant governor;

28 (e) secretary of state;

29 (f) attorney general;

30 (g) state auditor;

- 1 (h) public service commissioners;
- 2 (i) state superintendent of public instruction;
- 3 (j) clerk of the supreme court;
- 4 ~~(k) chief justice of the supreme court;~~
- 5 ~~(h)~~(k) justices of the supreme court;
- 6 ~~(m)~~(l) district court judges;
- 7 ~~(n)~~(m) state senators;
- 8 ~~(o)~~(n) members of the house of representatives.
- 9 (2) The following order of placement must be observed for county offices:
- 10 (a) clerk of the district court;
- 11 (b) county commissioner;
- 12 (c) county clerk and recorder;
- 13 (d) sheriff;
- 14 (e) coroner;
- 15 (f) county attorney;
- 16 (g) county superintendent of schools;
- 17 (h) county auditor;
- 18 (i) public administrator;
- 19 (j) county assessor;
- 20 (k) county treasurer;
- 21 (l) surveyor;
- 22 (m) justice of the peace.
- 23 (3) The secretary of state shall designate the order for placement on the ballot of any offices not on the
- 24 above lists, except that the election administrator shall designate the order of placement for municipal, charter,
- 25 or consolidated local government offices and district offices when the district is part of only one county.
- 26 (4) Constitutional amendments must be placed before statewide referendum and initiative measures.
- 27 Ballot issues for a county, municipality, school district, or other political subdivision must follow statewide
- 28 measures in the order designated by the election administrator.
- 29 (5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled must
- 30 be maintained.

1 (6) If there is a short-term and a long-term election for the same office, the long-term office must
2 precede the short-term."

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4 **Section 6.** Section 13-14-211, MCA, is amended to read:

5 **"13-14-211. Judicial offices separate and independent offices for election purposes.** (1) Each
6 vacancy for justice of the supreme court is a separate and independent office for election purposes. The ~~chief~~
7 ~~justice~~ clerk of the supreme court shall assign an individual number to the justices and certify these numbers
8 to the office of the secretary of state.

9 (2) Each vacancy for judicial office in a district ~~which~~ that has more than one district judge is a separate
10 and independent office for election purposes.

11 (3) Each vacancy for office in a county ~~which~~ that has more than one justice of the peace is a separate
12 and independent office for election purposes."

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14 **Section 7.** Section 13-14-212, MCA, is amended to read:

15 **"13-14-212. Form of ballot on retention of certain incumbent judicial officers.** If there is no
16 candidate other than the incumbent for the office of ~~chief justice~~, supreme court justice, district court judge, or
17 justice of the peace, the name of the incumbent must be placed on the official ballot for the general election as
18 follows:

19 Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the
20 state of Montana be retained in office for another term?

21 Following the question, provision must be made, subject to rules adopted pursuant to 13-12-202, for a
22 voter to indicate a "yes" or "no" vote."

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24 **Section 8.** Section 22-1-502, MCA, is amended to read:

25 **"22-1-502. Location -- control by board of trustees.** The state law library of the state of Montana ~~shall~~
26 must be located in Helena, Montana, and ~~shall~~ must be in the immediate custody and subject to the control of
27 a board of trustees consisting of the ~~chief justice and the~~ justices of the supreme court of the state of Montana."

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29 NEW SECTION. **Section 9. Directions to code commissioner.** Whenever a reference to "the chief
30 justice of the supreme court", "the office of the chief justice", or "the chief justice" appears in legislation enacted

1 by the 2005 legislature, the code commissioner is directed to change it to an appropriate reference to "chief
2 justice" or "justice of the supreme court".

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4 NEW SECTION. Section 10. Saving clause. [This act] does not affect rights and duties that matured,
5 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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7 NEW SECTION. Section 11. Effective date. [This act] is effective January 5, 2009.

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9 NEW SECTION. Section 12. Applicability. [This act] applies to elections occurring on or after January
10 1, 2008.

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