

HOUSE JOINT RESOLUTION NO. 43

INTRODUCED BY D. RICE

BY REQUEST OF THE HOUSE JUDICIARY STANDING COMMITTEE

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT SUFFICIENT STAFF RESOURCES TO CONDUCT AN INTERIM STUDY OF THE JUDICIAL BRANCH OF STATE GOVERNMENT; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 61ST LEGISLATURE.

WHEREAS, the Judicial Branch of state government is created by Article VII of the Montana Constitution; and

WHEREAS, the Constitution gives to the Legislature certain powers concerning the Judicial Branch, such as the creation of Courts of Limited Jurisdiction, allows the Legislature to review and disapprove of judicially created rules of procedure in the two legislative sessions following adoption of those rules, and requires the Legislature to take certain actions concerning the Judicial Branch, such as the creation of judicial districts and the creation of the Judicial Standards Commission; and

WHEREAS, it is the Legislature that provides funding to the State Supreme Court, to all District Courts, to Courts of Limited Jurisdiction, to administrative offices, such as the Office of the Supreme Court Administrator, to the various boards and commissions associated with the Judicial Branch, such as the Sentence Review Division and the Judicial Standards Commission, and to the State Law Library, and it falls to the Legislature to ensure that funds appropriated to Judicial Branch entities are spent for purposes generally supported by the electorate; and

WHEREAS, litigation in the state court system recently disqualified an attempt to place on the ballot a constitutional initiative revising the process for removing judges and justices from office that, while found legally deficient in the manner in which signatures were collected on the initiative petitions, did collect the number of valid signatures necessary to place the initiative on the ballot; and

WHEREAS, a major change to the method of funding the District Courts was enacted in 2001 by the Legislature, converting over 400 local government positions to state employee positions, and there are subjects

1 of interest to the Legislature concerning the implementation of the funding changes and the operations of the
2 District Courts that would benefit from interim Legislative review; and

3 WHEREAS, the Montana Supreme Court manages 20 specialized boards and commissions that are
4 attached to the Supreme Court, some of which are created by statute and others by court order, and the work
5 of those boards and commissions is largely unknown to most residents of the state; and

6 WHEREAS, the Montana Supreme Court's Canons of Judicial Ethics were adopted May 1, 1963, based
7 upon a 1908 version that was little changed since 1908, the Canons have undergone only minor changes since
8 1963, and questions have arisen as to whether judges or judicial candidates have violated the Canons, but those
9 questions have never been satisfactorily answered; and

10 WHEREAS, the Montana Supreme Court has, in accordance with section 3-2-601, MCA, issued full
11 written opinions on cases before the Court but in more recent times has adopted the practice of issuing only
12 orders in some cases and there is some disagreement among the members of the Court as to whether the
13 practice of issuing only orders should be followed by the Court; and

14 WHEREAS, a legislative study of the organization and operation of the Judicial Branch of state
15 government has not been conducted for at least 10 years.

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17 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
18 STATE OF MONTANA:

19 That the Legislative Council be requested to designate an appropriate interim committee, pursuant to
20 section 5-5-217, MCA, or direct sufficient staff resources to conduct a review of the Judicial Branch of state
21 government.

22 BE IT FURTHER RESOLVED, that the study:

23 (1) determine if there is adequate legislative oversight of the Judicial Branch of government and, if there
24 is not, what level of oversight is appropriate and in what manner the oversight should be undertaken;

25 (2) identify any public concerns with or public perceptions of the Judicial Branch of state government that
26 need to be addressed through legislation or Constitutional amendment;

27 (3) determine if the Montana Canons of Judicial Ethics are still appropriate nearly 100 years after their
28 original adoption and if they are being appropriately applied by the Judicial Standards Commission and determine
29 if the Code of Conduct for state employees applies to the Judicial Branch or should be made to apply to that
30 Branch;

1 (4) ascertain the extent to which the public understands the role and function of the Judicial Branch of
2 state government;

3 (5) determine if the application of the Montana Recall Act, as applied to the Judicial Branch, is necessary,
4 appropriate, and correctly written and, if the Act is determined to be unnecessary, inappropriate, or incorrectly
5 written, propose changes to correct the deficiencies identified;

6 (6) assess whether the current processes for judicial recusal, disqualification, or impeachment are
7 correctly written and functioning as they should and, if deficiencies are found to exist, propose remedies to correct
8 those deficiencies;

9 (7) examine the appropriateness and qualifications of candidates for judicial office and determine if
10 candidates for judicial office are or should be covered by the Montana Canons of Judicial Ethics;

11 (8) investigate whether judicial opinions are in all cases necessary to accompany judicial orders or
12 judgments and, if not, under what circumstances the courts have stated that the lack of an opinion is justified and
13 reasonable;

14 (9) identify the extent to which reports of the Judicial Branch are disseminated and whether there should
15 be more extensive distribution of judicial reports;

16 (10) review the original and current processes for establishing the Judicial Qualifications Commission
17 and assess if the Judicial Qualifications Commission is functioning in a manner that ensures it is achieving its
18 purpose; and

19 (11) determine if judicial opinions and orders involving specific statutes and administrative rules have the
20 effect of changing those statutes or rules and, if so, whether the statutes and rules have subsequently been or
21 should be amended to reflect the judicial opinion.

22 BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be
23 presented to and reviewed by an appropriate committee designated by the Legislative Council.

24 BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review
25 requirements, be concluded prior to September 15, 2008.

26 BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions,
27 comments, or recommendations of the appropriate committee, be reported to the 61st Legislature.

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