

SENATE JOURNAL  
COMMITTEE NO. 1  
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SR 85

### LEGAL REVIEW NOTE

LC#: LC0569, To Legal Review Copy, as of November 13, 2012

**Short Title:** Revise laws related to judge disqualification

**Attorney Reviewer:** Todd Everts/Julianne Burkhardt

**Date:** November 29, 2012

### CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

*As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.*

#### Legal Reviewer Comments:

LC0569, as drafted, may raise potential constitutional issues associated with Article VII, sec. 2, of the Montana Constitution and the separation of powers doctrine.

Article VII, sec. 2, provides:

- Section 2. Supreme court jurisdiction.** (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.
- (2) It has general supervisory control over all other courts.
  - (3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. ***Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.***
  - (4) Supreme court process shall extend to all parts of the state. (emphasis added)

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LC0569, as drafted, amends section 3-1-804, MCA, by revising the procedures related to substitution of judges. Section 3-1-804, MCA, codifies a rule of procedure of the Montana Supreme Court. Consequently, because LC0569 substantively revises a Montana Supreme Court rule of procedure, it raises the potential issue of whether those revisions conform to the provisions of Article VII, sec. 2, of the Montana Constitution that limit the Legislature's authority to disapproval or rejection of the rules in either of the two sessions following promulgation.

LC0569, as drafted, may also raise potential separation of powers issues. The separation of powers clause of the Montana Constitution is found at Article III, sec. 1, and provides:

**Section 1. Separation of powers.** The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

LC0569, as drafted, may raise a potential issue as to whether a substantive revision of a Montana Supreme Court rule of procedure by the Legislature conflicts with Article III, sec. 1.

**Requester Comments:** None