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HOUSE BILL NO. 772

INTRODUCED BY L. HELLEGAARD, S. GUNDERSON, J. SCHILLINGER, B. MITCHELL, P. FIELDER, J. HINKLE, E. BUTTREY, C. HINKLE, J. READ, R. MINER, L. DEMING, N. HASTINGS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO JUDICIAL DISQUALIFICATION AND RECUSAL; REQUIRING RECUSAL WHEN A LAWYER OR PARTY TO A PROCEEDING HAS MADE CERTAIN CAMPAIGN CONTRIBUTIONS; REQUIRING RECUSAL WHEN A JUDGE HAS DEMONSTRATED INFERABLE BIAS, FAILURE TO MAINTAIN IMPARTIALITY, OR CONFLICT OF INTEREST; ALLOWING THE ATTORNEY GENERAL TO APPOINT A SUBSTITUTE DISTRICT COURT JUDGE IN CERTAIN CIRCUMSTANCES; PROVIDING FOR NEGOTIATIONS WITH THE ATTORNEY GENERAL AND LEGISLATIVE LEADERS WHEN A SUPREME COURT JUSTICE REFUSES TO DISQUALIFY IN CERTAIN CIRCUMSTANCES; REPEALING SECTION 3-1-609, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Judicial disqualification -- recusal -- when legislature a party --**

**definitions.** (1) A judicial officer ~~shall disqualify the judicial officer~~ must be disqualified in a proceeding if:

(a) the judicial officer has received one or more combined contributions totaling at least one-half of the maximum amount allowable under 13-37-216 from a lawyer or party to the proceeding in an election within the previous 6 years;

(b) a lawyer or party to the proceeding has made one or more contributions directly or indirectly to a political committee or other entity that engaged in independent expenditures that supported the judicial officer or opposed the judicial officer's opponent in an election within the previous 6 years if the total combined amount of the contributions exceed at least one-half of the maximum amount that would otherwise be allowed under 13-37-216 if the contributions had been made directly to the judicial candidate; or

(c) the judicial officer is a party in the proceeding or has a conflict of interest.

(2) (a) If the legislature is a party in a proceeding, files a motion to disqualify or recuse one or more of the supreme court justices, and includes an affidavit alleging specific inferable bias, failure to maintain

1 impartiality, or conflict of interest, the supreme court justices specified in the motion may not sit in the case  
2 before the supreme court. The chief justice of the supreme court shall assign district court judges to sit in place  
3 of each disqualified or recused supreme court justice.

4 (b) If the motion filed pursuant to subsection (2)(a) is against the chief justice, the attorney general  
5 shall assign a district court judge to sit in place of the chief justice.

6 (c) If all of the supreme court justices are included in a motion or motions filed pursuant to  
7 subsection (2)(a), the motion and affidavit must specify the reasons why each justice should be disqualified or  
8 recuse.

9 (d) (i) If one or more of the supreme court justices refuse to disqualify, the chief justice shall  
10 negotiate with the speaker of the house, the president of the senate, and the attorney general to reach a  
11 resolution. If one party to the conflict is unable to negotiate, that party may appoint a replacement to conduct  
12 the negotiations. The first priority of all parties in the negotiation must be the Montana constitution. Once  
13 alternate solutions are proposed, the four parties or their designees shall vote to resolve the conflict. If an  
14 unbreakable tie occurs, the majority leader of the house of representatives shall break the tie.

15 (ii) The supreme court is bound by the alternate solution chosen by the parties as provided in  
16 subsection (2)(d)(i).

17 (3) An affidavit from the legislature seeking disqualification or recusal of one or more supreme  
18 court justices is presumed to be in good faith. The legislature may use past rulings by the court that suggest an  
19 inferable bias. The affidavit may not be dismissed if the affidavit is against all of the supreme court justices  
20 unless the chief justice, the speaker of the house, the president of the senate, and the attorney general agree  
21 that the affidavit is in bad faith. The reason for the dismissal must be in writing with reasons for the finding.

22 (4) (a) Except as provided in subsection (4)(b), a motion to disqualify a judicial officer, except a  
23 supreme court justice, filed under the provisions of 3-1-805 or this section must be filed at least 30 days before  
24 the date set for trial or hearing.

25 (b) A motion and affidavit alleging bias, conflict of interest, failure to maintain impartiality, or an  
26 occurrence of inferable bias may be filed during a trial or hearing if a party believes the judicial officer has  
27 displayed one or more of those attributes after the start of the trial or hearing.

28 (5) As used in this section, the following definitions apply:

- 1 (a) "Bias" means a motivational influence that influences judgment whether knowingly or  
2 unknowingly.
- 3 (b) "Conflict of interest" means:  
4 (i) a lack of open-mindedness that is observable or measurable by public or policy comments;  
5 (ii) using the law incorrectly or falsely to get a desired result; and  
6 (iii) when the judicial officer is involved in the case as a party.
- 7 (c) "Contribution" has the meaning provided in 13-1-101.
- 8 (d) "Impartiality" means a principle of justice holding that decisions must be based on objective  
9 criteria.
- 10 (e) "Inferable bias" means when the appearance of bias becomes evident through comments,  
11 facial expressions, and disparaging comments. Inferable bias includes:  
12 (i) when a person falsely uses the law, twists the law, or purposely ignores a law or judicial  
13 decision to achieve a desired outcome;  
14 (ii) when a judicial officer decides a case in which the judicial officer is a party or has an interest;  
15 (iii) when a person has experience, beliefs, or opinions that would influence, despite the judicial  
16 officer's subjective objections, the judicial officer's ability to be impartial; or  
17 (iv) when a pattern develops of the judicial officer violating 1-2-101.
- 18 (f) "Judicial officer" means justices of the supreme court, judges of the district courts, justices of  
19 the peace, municipal judges, city judges, standing masters, and administrative judges or hearing examiners in  
20 cases brought under Title 2, chapter 4.
- 21 (g) "Open-mindedness" means a willingness to:  
22 (i) consider opposing views and alternative solutions to civil conflicts between parties;  
23 (ii) remain open to persuasion when issues arise in a pending case that may go against a judicial  
24 officer's views;  
25 (iii) go against stare decisis;  
26 (iv) concede that the appearance of bias and prejudice has been shown; and  
27 (v) treat parties and disputants equally that has been demonstrated in the past and demonstrated  
28 to the present parties and disputants, especially parties and disputants who are similarly situated.