

LEGAL REVIEW NOTE

Bill No.: SB 311

LC#: LC0086, To Legal Review Copy, as of
February 1, 2023

Short Title: Reduce the number of associate judges
on the Supreme Court

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Date: February 10, 2023

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 jurisdictionally 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.

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review **IS NOT** dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).*

Legal Reviewer Comments:

SB 311 amends section 3-2-101, MCA, to reduce the number of associate justices on the Montana Supreme Court from six to four. The first position that is eliminated is the term that would commence January 6, 2025, and the second position that is eliminated is the term that would commence January 4, 2027. Consequently, the legislation provides for a two-year timeframe where there are five associate justices.

Article VII, section 3(1), of the Montana Constitution provides "[t]he supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing."

The Montana Legislature increased the number of associate justices by two in Senate Bill No. 286 (1979), to be filled during the 1980 general election with an effective date until the first Monday of January 1989, at which point the associate justices were to revert to four. In 1987 the Montana Legislature amended session law in Senate Bill No. 161 (1987) to extend the termination date to the first Monday of January 1997. Then in 1995, the Montana Legislature eliminated the termination date that was imposed in prior sessions by passing Senate Bill No. 6 (1995).

SB 311, as drafted, may raise potential constitutional conformity issues associated with Article VII, section 3(1), of the Montana Constitution, since it provides for five associate justices during a two-year timeframe instead of four or six. The result is to have a potential tie vote when the Chief Justice's vote is considered in the vote count. There is no discussion in the Montana Constitutional Convention transcripts regarding five associate justices. Section 7 of SB 311 provides that if the Montana Supreme Court invalidates this legislation by finding it impermissible to reduce the number of associate justices from six to five, then the reduction is void. Section 8(4) then provides that if the contingency occurs, there will be no general election to be held in November 2028 for two associate positions. Since the statute would provide there are four associate justices during a contingency and six associate justices would be on the Supreme Court, it also provides for a standard savings clause.

Requester Comments: