

Legislative Considerations for a Montana Judicial Performance Evaluation Bill

Prepared for the Senate Select Committee of Judicial Oversight and Reform

By Rachel Weiss, August 19, 2024

Background

At the July 15 meeting, the Senate Select Committee on Judicial Oversight and Reform (SJOR) requested staff create draft legislation to enact a judicial performance evaluation (JPE) system in Montana. The committee indicated that using Utah's JPE system as a model would be the starting point and gave staff additional directions at the July 29 meeting.

Initial Bill Draft Considerations and Next Steps

While the Utah JPE system provides a framework for the bill, there are several key questions that the committee should consider and answer to provide Montana-specific details for the draft. In addition to the [Utah draft language](#), an [overview table of JPE systems in other states](#) will prove helpful as SJOR members provide instruction.

Initial guidance provided by the committee at the July 29 meeting is **highlighted** below.

After the August 19 meeting, staff will work with Senator McGillvray to refine the draft for the committee's next meeting.

- **What courts should be included in the JPE bill?**
 - Supreme Court justices
 - District Court judges
 - The chief water judge and associate water judge
 - Courts of Limited Jurisdiction including
 - Justice Courts
 - City Courts
 - Municipal Courts
 - Workers' Compensation Court judge
 - Additional judge categories could be added later as workload and budget allow

- **How many members should sit on the Judicial Performance Evaluation Commission and who should appoint them?** 11 members appointed by legislative leaders, the governor, and the supreme court.

- **Where should the commission be located (or administratively attached)?**
 - The Legislative Branch

- **What is the timing of the evaluations?**
 - Set time around elections or appointments but needs further revision
 - Random

- **Should the evaluations be disseminated publicly?**
 - Yes –

Additional Bill Draft Considerations

- Privacy
 - Utah’s program allows the commissioners to take votes privately and to publish only vote totals.
 - Reports on judicial performance evaluations are only made public at certain times in the process.
 - Noted in bill as NEEDS REVIEW: PRIVACY
- Reports to the court’s administrative body
 - Utah has a Judicial Council that is the policy-making body for the courts. Montana has a District Court Council that currently has limited statutory authority that does not include oversight over district court judges.
 - Noted in bill as NEEDS REVIEW: DCC
- Rulemaking
 - Utah’s commission has administrative rulemaking authority to provide additional standards and details for the evaluation processes. Montana’s Administrative Procedure Act (or MAPA) specifically excludes the Legislature (see section 2-3-102, MCA). If the committee chooses to attach the commission to the Legislature for administrative purposes, it might consider what process the commission should use to adopt rules.
 - Noted in bill as NEEDS REVIEW: RULEMAKING