

1 in [section 5(4)(b)(i)], is not overcome by substantial countervailing evidence; or
2 (b) a judge does not meet the certification standards under [section 7], but the presumption
3 described in [section 5(4)(b)(ii)], that the judge does not meet or exceed minimum performance standards, is
4 overcome by substantial countervailing evidence.

5
6 **NEW SECTION. Section 3. Judicial performance evaluation commission -- appointment --**
7 **members -- quorums.** (1) There is a judicial performance evaluation commission. The commission consists of
8 11 members as follows:

9 (a) three members appointed by the president of the senate, only one of whom may be a member
10 of the state bar of Montana;

11 (b) three members appointed by the speaker of the house of representatives, only one of whom
12 may be a member of the state bar of Montana;

13 (c) three members appointed by the governor, only one of whom may be a member of the state
14 bar of Montana; and

15 (d) two members appointed by the members of the supreme court, only one of whom may be a
16 member of the state bar of Montana.

17 (2) The president of the senate and the speaker of the house of representatives shall confer when
18 appointing members under subsections (1)(a) and (b) to ensure that there is at least one member of their six
19 appointees who is a member of the state bar of Montana and, if possible, at least one member of their six
20 appointees who is a retired district court judge.

21 (3) A sitting legislator or a sitting judge may not serve as a commission member.

22 (4) (a) A commission member appointed under subsection (1) serves a 4-year term.

23 (b) A member may not serve more than three consecutive terms.

24 (c) When a vacancy occurs in the commission for any reason, the replacement must be appointed
25 for the unexpired term by the same appointing authority that appointed the member creating the vacancy.

26 (5) The commission shall elect a chair from among its members.

27 (6) (a) Seven members of the commission constitute a quorum.

28 (b) The action of a majority of the quorum constitutes the action of the commission, except that the

1 commission may not make a determination that a judge meets or exceeds minimum performance standards, or
2 that a judge does not meet or exceed minimum performance standards, with a vote of less than five members.

3 (c) If, because of absences, the commission is unable to make a determination described in
4 subsection (6)(b) with at least five votes, the commission may meet a second time to make a determination.

5 (d) If a vote on the question of whether a judge meets or exceeds minimum performance
6 standards or does not meet or exceed minimum performance standards ends in a tie or does not pass with at
7 least five votes, the record shall reflect that the commission made no determination in relation to that judge.

8 (7) The commission shall provide recommendations to the Legislature regarding the commission's
9 budget and if the judicial performance evaluation program should be expanded to other courts.

10

11 NEW SECTION. **Section 4. Salary and expenses -- staff -- administrative attachment.** (1) A

12 commission member may not receive compensation or benefits for the member's service. A commission
13 member may receive per diem and travel expenses as provided in Title 2, chapter 18, part 5.

14 (2) The commission shall employ an executive director and may employ additional staff as
15 necessary within budgetary constraints.

16 (3) The commission is attached to the Legislature for administrative purposes only. The Legislature
17 shall provide information technology and budgeting services to the commission if requested. [NEEDS REVIEW:
18 RULEMAKING]

19

20 NEW SECTION. **Section 5. Judicial performance evaluations.** (1) [NEEDS REVIEW: TIMING]

21 Beginning with the 20XX judicial elections, the commission shall prepare a performance evaluation for:

22 (a) each district court judge in the third and fifth year of the judge's term; and

23 (b) each justice of the Montana Supreme Court in the third and seventh year of the justice's term.

24 (2) Except as provided in subsection (4), the performance evaluation for a judge under subsection

25 (1) may only consider the information contained in subsection (3). The performance evaluation must give

26 primary emphasis to the information that is gathered and relates to the performance of the judge during the

27 period subsequent to the last judicial election of that judge or, if the judge has not had a judicial election, during

28 the period subsequent to the judge's appointment as a judge and applicable to the judge's first judicial election:

- 1 (3) The information a performance evaluation must consider is as follows:
- 2 (a) the results of the judge’s most recent judicial performance survey that is conducted by a third
- 3 party in accordance with [section 6];
- 4 (b) information concerning the judge’s compliance with certification standards established in
- 5 accordance with [section 7];
- 6 (c) courtroom observation;
- 7 (d) the judge’s judicial disciplinary record, if any;
- 8 (e) public comment solicited by the commission;
- 9 (f) information from an earlier judicial performance evaluation concerning the judge except that the
- 10 commission shall give primary emphasis to information gathered subsequent to the last judicial election; and
- 11 (g) any other factor that the commission:
- 12 (i) considers relevant to evaluating the judge’s performance for the purpose of an election; and
- 13 (ii) establishes by rule made in accordance with [NEEDS REVIEW: RULEMAKING].
- 14 (4) The commission shall [NEEDS REVIEW: RULEMAKING] make rules concerning the conduct of
- 15 courtroom observation under Subsection (3), which must include the following:
- 16 (a) who may perform the courtroom observation;
- 17 (b) whether the courtroom observation must be performed in person or may be performed by
- 18 electronic means; and
- 19 (c) a list of principles and standards used to evaluate the behavior observed.
- 20 (5) (a) As part of the evaluation conducted under this section, the commission shall do one of the
- 21 following:
- 22 (i) determine, by a vote of at least five members, that the judge meets or exceeds minimum
- 23 performance standards;
- 24 (ii) determine, by a vote of at least five members, that the judge does not meet or exceed minimum
- 25 performance standards;
- 26 (iii) determine, by a majority vote, that the information concerning the judge is insufficient to make a
- 27 determination described in subsection (4)(a)(i) or (ii); or
- 28 (iv) fail to make a determination described in subsection (5)(a)(i), (ii), or (iii) by the number of votes

1 required for one of those determinations.

2 (b) (i) If a judge meets the certification standards established in accordance with [section 7], there
3 is a rebuttable presumption that the judge meets or exceeds minimum performance standards.

4 (ii) If a judge fails to meet the certification standards established in accordance with [section 7],
5 there is a rebuttable presumption that the judge does not meet or exceed minimum performance standards.

6 (c) If the commission deviates from a presumption described in subsection (5)(b), the commission
7 shall provide a detailed explanation of the reason for that deviation in the commission's report under [section 8].

8 (d) If the commission makes the determination described in subsection (5)(a)(iii) or fails to make a
9 determination described in subsection (5)(a)(i), (ii), or (iii) by the number of votes required for those
10 determinations, the commission shall note that fact in the commission's report.

11 (6) (a) The commission shall allow a judge who is the subject of a judicial performance evaluation
12 and who has not passed one or more of the certification standards on the evaluation to appear and speak at
13 any commission meeting during which the judge's judicial performance evaluation is considered.

14 (b) The commission may invite any judge to appear before the commission to discuss concerns
15 about the judge's judicial performance.

16 (c) The commission may meet in a closed meeting to discuss a judge's judicial performance
17 evaluation by complying with Title 2, chapter 3, part 2.

18 (d) [NEEDS REVIEW: PRIVACY, ARTICLE II, SECTION 9] Any record of an individual
19 commissioner's vote under subsection (5) is confidential.

20 (e) (i) A member of the commission, including a member of the state bar of Montana, may not be
21 disqualified from voting under subsection (5) solely because the member appears before the judge as an
22 attorney, a fact witness, or an expert, unless the member is a litigant in a case pending before the judge.

23 (ii) Notwithstanding subsection (6)(e)(i), a member of the commission shall disclose any conflicts
24 of interest with the judge being reviewed to the other members of the commission before the deliberation and
25 vote under subsection (6).

26 (iii) [NEEDS REVIEW: PRIVACY] Information disclosed under this subsection (6)(e) is confidential.

27 (f) [NEEDS REVIEW: PRIVACY] The commission may only disclose the final commission vote
28 described in subsection (5).

1 (7) (a) If the Montana supreme court issues a public sanction of a judge after the commission
 2 makes or fails to make a determination described in subsection (5), but before the publication of the voter
 3 information pamphlet in accordance with 13-27-401, the commission may reconsider the commission's action.

4 (b) The commission shall invite the judge described in subsection (7)(a) to appear before the
 5 commission during a closed meeting for the purpose of reconsidering the commission's action.

6 (c) The judge described in subsection (7)(a) may provide a written statement, not to exceed 100
 7 words, that shall be included in the judge's evaluation report.

8 (d) The commission shall include in the judge's evaluation report:

9 (i) the date of the reconsideration;

10 (ii) any change in the action of the commission; and

11 (iii) a brief statement explaining the reconsideration.

12 (e) The commission shall:

13 (i) submit revisions to the judge's evaluation report to the secretary of state no later than August
 14 31 of a regular general election year for publication in the voter information pamphlet; and

15 (ii) publish the revisions on the commission's website and through any other means the
 16 commission considers appropriate and within budgetary constraints.

17 (8) (a) The commission shall compile a midterm report of the commission's judicial performance
 18 evaluation of a judge.

19 (b) The midterm report of a judicial performance evaluation must include information that the
 20 commission considers appropriate for purposes of judicial self-improvement.

21 (c) The commission shall provide the midterm report to the evaluated judge, the Montana supreme
 22 court, and the district court council [NEEDS REVIEW: DCC].

23 (d) (i) The commission may provide a partial midterm evaluation to a judge whose appointment
 24 date precludes the collection of complete midterm evaluation data.

25 (ii) For a newly appointed judge, a midterm evaluation is considered partial when the midterm
 26 evaluation is missing a respondent group, including attorneys, court staff, court room observers, or intercept
 27 survey respondents.

28 (iii) A judge who receives partial midterm evaluation data may receive a statement in

1 acknowledgment of that fact on the judge’s voter information pamphlet page.

2 (iv) On or before the beginning of the evaluation cycle, the commission shall inform the district
3 court council [NEEDS REVIEW: DCC] of the name of any judge who receives a partial midterm evaluation.

4 (9) The commission shall identify a judge whose midterm evaluation:

5 (a) fails to meet certification standards in accordance with [section 7] or as established by rule; or

6 (b) otherwise demonstrates to the commission that the judge’s performance would be of such
7 concern if the performance occurred in an evaluation that the judge would be invited to appear before the
8 commission in accordance with subsection (6)(b).

9 (10) The commission may make rules in accordance with [NEEDS REVIEW: RULEMAKING], as
10 necessary to administer the evaluation required by this section.

11

12 **NEW SECTION. Section 6. Judicial performance survey.** (1) A third party under contract to the
13 commission shall conduct, on an ongoing basis during the judge’s term in office, the judicial performance
14 survey required by [this section] concerning a judge who is subject to an election.

15 (2) (a) The judicial performance survey must include as respondents a sample of each of the
16 following groups as applicable:

17 (i) attorneys who have appeared before the judge as counsel;

18 (ii) jurors who have served in a case before the judge; and

19 (iii) court staff who have worked with the judge.

20 (b) Only a respondent under subsection (2)(a)(i) who is admitted to practice law in the state and in
21 good standing with the state bar of Montana may evaluate a judge’s legal ability under subsection (7)(a).

22 (3) The commission may include an additional classification of respondents if the commission:

23 (a) considers a survey of that classification of respondents helpful to voters; and

24 (b) establishes the additional classification of respondents by rule [NEEDS REVIEW:
25 RULEMAKING].

26 (4) All survey responses are confidential, including comments included with a survey response.

27 (5) If the commission provides information to a judge or the district court council [NEEDS REVIEW:
28 DCC], the commission shall provide the information in such a way as to protect the anonymity of a survey

1 respondent.

2 (6) A survey must be provided to a potential survey respondent within 30 days of the day on which
3 the case in which the person appears in the judge’s court is closed, exclusive of any appeal, except for court
4 staff and attorneys, who may be surveyed at any time during the survey period.

5 (7) Survey categories must include questions concerning a judge’s:

6 (a) legal ability, including the following:

7 (i) demonstration of understanding of the substantive law and any relevant rules of procedure and
8 evidence;

9 (ii) attentiveness to factual and legal issues before the court;

10 (iii) adherence to precedent and ability to clearly explain departures from precedent;

11 (iv) grasp of the practical impact on the parties of the judge’s rulings, including the effect of delay
12 and increased litigation expense;

13 (v) ability to write clear judicial opinions; and

14 (vi) ability to clearly explain the legal basis for judicial opinions;

15 (b) judicial temperament and integrity, including the following:

16 (i) demonstration of courtesy toward attorneys, court staff, and others in the judge’s court;

17 (ii) maintenance of decorum in the courtroom;

18 (iii) demonstration of judicial demeanor and personal attributes that promote public trust and
19 confidence in the judicial system;

20 (iv) preparedness for oral argument;

21 (v) avoidance of impropriety or the appearance of impropriety;

22 (vi) display of fairness and impartiality toward all parties; and

23 (vii) ability to clearly communicate, including the ability to explain the basis for written rulings, court
24 procedures, and decisions; and

25 (c) administrative performance, including the following:

26 (i) management of workload;

27 (ii) sharing proportionally the workload within the court or district; and

28 (iii) issuance of opinions and orders without unnecessary delay.

1 (8) If the commission determines that a certain survey question or category of questions is not
2 appropriate for a respondent group, the commission may omit that question or category of questions from the
3 survey provided to that respondent group.

4 (9) (a) The survey must allow respondents to indicate responses in a manner determined by the
5 commission, which must be:

6 (i) on a numerical scale from one to five; or

7 (ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in
8 the affirmative or negative.

9 (b) (i) To supplement the responses to questions on either a numerical scale or in the affirmative or
10 negative, the commission may allow respondents to provide written comments.

11 (ii) The commission's executive director may not provide the commission a comment that would be
12 prohibited in relation to taking an employment action under federal or state law.

13 (10) The commission shall compile and make available to each judge that judge's survey results
14 with each of the judge's judicial performance evaluations.

15 (11) The commission may make rules [NEEDS REVIEW: RULEMAKING] as necessary to
16 administer the judicial performance survey

17
18 **NEW SECTION. Section 7. Certification standards.** (1) The commission shall establish certification
19 standards requiring that:

20 (a) the judge have no more than one public sanction issued by the Montana supreme court during
21 the judge's current term; and

22 (b) the judge receive a minimum score on the judicial performance survey as follows:

23 (i) an average score of no less than 65% on each survey category as provided in [section 6(7)];

24 and

25 (ii) if the commission includes a question on the survey that does not use the numerical scale, the
26 commission shall establish the certification standard for all questions that do not use the numerical scale to be
27 substantially equivalent to the standard required under subsection (1)(b)(i).

28 (2) The commission may establish an additional certification standard if the commission by at least

1 two-thirds vote:

2 (a) determines that satisfaction of the standard is necessary to the satisfactory performance of the
3 judge; and

4 (b) adopts the standard.

5 (3) The commission may make rules in accordance with [NEEDS REVIEW: RULEMAKING], to
6 establish a certification standard.

7

8 **NEW SECTION. Section 8. Publication of the judicial performance evaluation.** (1) (a) The
9 commission shall compile a report of the commission's judicial performance evaluation of a judge.

10 (b) The commission shall provide the report of a judicial performance evaluation nearest the
11 judge's next scheduled election to the judge at least 45 days before the last day on which the judge may file a
12 declaration of the judge's candidacy in the election.

13 (c) A report prepared in accordance with subsection (1)(b) and information obtained in connection
14 with the evaluation becomes a public record on the day following the last day on which the judge who is the
15 subject of the report may file a declaration of the judge's candidacy in the judge's scheduled election if the
16 judge declares the judge's candidacy for the election.

17 (d) Information collected and a report that is not public under subsection (1)(c) is [NEEDS
18 REVIEW: PRIVACY].

19 (2) Within 15 days of receiving a copy of the commission's report under subsection (1)(b):

20 (a) a judge who is the subject of an unfavorable action under [section 5(4)] may:

21 (i) provide a written response to the commission about the report; and

22 (ii) request an interview with the commission for the purpose of addressing the report; and

23 (b) a judge who is the subject of a favorable action under [section 5(4)] may provide a written
24 response to the commission about the commission's report.

25 (3) (a) After receiving a response from a judge in any form allowed by subsection (2), the
26 commission may meet and reconsider the commission's action.

27 (b) If the commission does not change the commission's action, the judge may provide a written
28 statement, not to exceed 100 words, that must be included in the commission's report.

- 1 (4) The report of a judicial performance evaluation must include:
- 2 (a) the results of the judicial performance survey, in both raw and summary form;
- 3 (b) information concerning the judge's compliance with the certification standards, including stating
- 4 how many of the certification standards the judge met;
- 5 (c) information concerning any public discipline that a judge has received that is not subject to
- 6 restrictions on disclosure under Title 3, chapter 1, part 11;
- 7 (d) a narrative concerning the judge's performance;
- 8 (e) the commission's determination under [section 5(4)];
- 9 (f) the number of votes for and against a determination described in [section 5(4)]; and
- 10 (g) any other information the commission considers necessary to include in the report to explain
- 11 the certification standards and the determination or lack of a determination made.
- 12 (5) (a) The commission may not include in the commission's report specific information concerning
- 13 an earlier judicial performance evaluation.
- 14 (b) The commission may refer to information from an earlier judicial performance evaluation
- 15 concerning the judge in the commission's report only if necessary to explain performance in the current
- 16 reporting period and giving primary emphasis to the information gathered during the current reporting period.
- 17 (6) The commission shall make the report of the judicial performance evaluation publicly available
- 18 on the internet and may make the report publicly available through other means within budgetary constraints.
- 19 (8) The commission shall provide a summary of the judicial performance evaluation for each judge
- 20 to the secretary of state for publication in the voter information pamphlet required by 13-27-401.
- 21 (9) The commission shall provide the district court council [NEEDS REVIEW: DCC] with:
- 22 (a) the judicial performance survey results for each judge; and
- 23 (b) a copy of each judicial performance evaluation.
- 24

25 **Section 9.** Section 13-27-401, MCA, is amended to read:

26 **"13-27-401. Voter information pamphlet.** (1) The secretary of state shall prepare for printing a voter

27 information pamphlet containing information relevant to the election, including but not limited to the following

28 information:

1 (a) -for each statewide ballot issue to be voted on at an election, as applicable:

2 ~~(a)(i)~~ ballot title, fiscal statement if applicable, and complete text of the issue;

3 ~~(b)(ii)~~ the form in which the issue will appear on the ballot;

4 ~~(c)(iii)~~ arguments advocating approval and rejection of the issue; and

5 ~~(d)(iv)~~ rebuttal arguments; and

6 (b) for each incumbent judge running in a judicial election or retention election:

7 (i) a summary of the judge's most recent judicial performance evaluation.

8 (2) The pamphlet must also contain a notice advising the recipient as to where additional copies of
9 the pamphlet may be obtained.

10 (3) Whenever more than one statewide ballot issue is to be voted on at a single election, the
11 secretary of state may publish a single pamphlet for all of the statewide ballot issues. The secretary of state
12 may arrange the information in the order that seems most appropriate, but the information for all statewide
13 ballot issues in the pamphlet must be presented in the same order.

14 (4) The secretary of state may prescribe by rule the format and manner of submission of the
15 arguments concerning the statewide ballot issue and judicial performance evaluations.

16 (5) For the purposes of this section, "judge" has the meaning provided in [section 2]."

17

18

- END -