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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 1666

05/05/2011 Authored by Beard, Simon, Loon, Winkler, Schomacker and others
The bill was read for the first time and referred to the Committee on Judiciary Policy and Finance
05/06/2011 By motion, recalled and re-referred to the Committee on Government Operations and Elections

1.1 A bill for an act
1.2 relating to judicial selection; proposing an amendment to the Minnesota
1.3 Constitution, article VI, sections 7 and 8; establishing retention elections for
1.4 judges; creating a judicial performance evaluation commission; appropriating
1.5 money; amending Minnesota Statutes 2010, sections 10A.01, subdivisions 7,
1.6 10, 15; 10A.14, subdivision 1; 10A.20, subdivision 2; 204B.06, subdivision 6;
1.7 204B.11, by adding a subdivision; 204B.34, subdivision 3; 204B.36, subdivision
1.8 4; 480B.01, subdivisions 1, 10; proposing coding for new law in Minnesota
1.9 Statutes, chapters 204D; 480B; 490A; repealing Minnesota Statutes 2010,
1.10 sections 204B.36, subdivision 5; 204D.14, subdivision 3.

1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.12 ARTICLE 1
1.13 CONSTITUTIONAL AMENDMENT

1.14 Section 1. CONSTITUTIONAL AMENDMENT PROPOSED.

1.15 An amendment to the Minnesota Constitution is proposed to the people. If the
1.16 amendment is adopted, article VI, section 7, will read:

1.17 Sec. 7. ~~The term of office of all judges shall be six years and until their successors are~~
1.18 ~~qualified. They~~ Following appointment by the governor, each judge shall initially hold
1.19 office for a term ending the first Monday in January following the next regularly scheduled
1.20 general election held more than one year after the appointment. A judge's retention shall
1.21 be ~~elected~~ determined by the voters from the area which ~~they are to serve~~ the judge
1.22 serves, in the manner provided by law. The term of office of a judge who is retained shall
1.23 ~~be eight years and until a successor is appointed and qualified. A judicial performance~~
1.24 ~~evaluation commission shall evaluate in a nonpartisan manner the performance of judges~~
1.25 ~~according to criteria that the commission develops and publishes, and any other criteria~~
1.26 ~~established by law.~~

2.1 article VI, section 8, will read:

2.2 Sec. 8. Whenever there is a vacancy in the office of judge, the governor shall appoint
2.3 ~~in the manner provided by law~~ a qualified person to fill the vacancy ~~until a successor is~~
2.4 ~~elected and qualified. The successor shall be elected for a six year term at the next general~~
2.5 ~~election occurring more than one year after the appointment~~ from a list of candidates
2.6 nominated by a merit selection commission, in the manner provided by law.

2.7 Sec. 2. **SUBMISSION TO VOTERS.**

2.8 The proposed amendment must be submitted to the people at the 2012 general
2.9 election. The question submitted must be:

2.10 "Shall the Minnesota Constitution be amended to strengthen the impartiality of the
2.11 judiciary by providing that all judges be appointed by the governor from a list of candidates
2.12 nominated by a merit selection commission, in the manner provided by law, with their
2.13 continuation in office determined at a retention election after a public, nonpartisan
2.14 evaluation of their performance by an independent performance evaluation commission?

2.15 Yes
2.16 No"

2.17 Sec. 3. **TRANSITION.**

2.18 A judge currently seated or elected at the time the constitutional amendment
2.19 provided in section 1 is adopted shall complete the remainder of the judge's term as it
2.20 existed before adoption of the amendment. Following completion of their terms, these
2.21 judges are subject to the retention election process as provided in the constitution and may
2.22 file for retention following the procedures described in article 2.

2.23 **ARTICLE 2**

2.24 **STATUTORY PROVISIONS**

2.25 Section 1. Minnesota Statutes 2010, section 10A.01, subdivision 7, is amended to read:

2.26 Subd. 7. **Ballot question.** "Ballot question" means a question or proposition that is
2.27 placed on the ballot and that may be voted on by all voters of the state. "Promoting or
2.28 defeating a ballot question" includes activities, other than lobbying activities, related to
2.29 qualifying the question for placement on the ballot. A ballot question does not include a
2.30 judicial retention election.

2.31 Sec. 2. Minnesota Statutes 2010, section 10A.01, subdivision 10, is amended to read:

3.1 Subd. 10. **Candidate.** "Candidate" means an individual who seeks nomination
 3.2 or election as a state constitutional officer, ~~or legislator, or judge~~ retention in a judicial
 3.3 office. An individual is deemed to seek nomination or election if the individual has taken
 3.4 the action necessary under the law of this state to qualify for nomination or election, has
 3.5 received contributions or made expenditures in excess of \$100, or has given implicit or
 3.6 explicit consent for any other person to receive contributions or make expenditures in
 3.7 excess of \$100, for the purpose of bringing about the individual's nomination or election.
 3.8 A candidate remains a candidate until the candidate's principal campaign committee is
 3.9 dissolved as provided in section 10A.24.

3.10 Sec. 3. Minnesota Statutes 2010, section 10A.01, subdivision 15, is amended to read:

3.11 Subd. 15. **Election.** "Election" means a primary, special primary, general, ~~or~~
 3.12 special, or retention election.

3.13 Sec. 4. Minnesota Statutes 2010, section 10A.14, subdivision 1, is amended to read:

3.14 Subdivision 1. **First registration.** The treasurer of a political committee, political
 3.15 fund, principal campaign committee, or party unit must register with the board by filing a
 3.16 statement of organization ~~no later than~~ within the earliest of:

3.17 (1) 14 days after the committee, fund, or party unit has made a contribution, received
 3.18 contributions, or made expenditures in excess of \$100, or by:

3.19 (2) 72 hours after the committee, fund, or party unit has made a contribution, received
 3.20 contributions, or made expenditures in excess of \$100, if the contribution or expenditure
 3.21 was made to advocate the retention or defeat of a candidate for judicial office; or

3.22 (3) the end of the next business day after it has received a loan or contribution that
 3.23 must be reported under section 10A.20, subdivision 5, ~~whichever is earlier.~~

3.24 Sec. 5. Minnesota Statutes 2010, section 10A.20, subdivision 2, is amended to read:

3.25 Subd. 2. **Time for filing.** (a) The reports must be filed with the board on or before
 3.26 January 31 of each year and additional reports must be filed as required and in accordance
 3.27 with paragraphs (b) to ~~(d)~~ (e).

3.28 (b) In each year in which the name of the candidate is on the ballot, the report of
 3.29 the principal campaign committee must be filed 15 days before a primary and ten days
 3.30 before a general election, seven days before a special primary and a special election,
 3.31 and ten days after a special election cycle.

3.32 (c) In each general election year, a political committee or political fund must file
 3.33 reports 28 and 15 days before a primary and 42 and ten days before a general election.

4.1 Beginning in 2012, reports required under this paragraph must also be filed 56 days before
4.2 a primary.

4.3 (d) In each general election year, a party unit must file reports 15 days before a
4.4 primary and ten days before a general election.

4.5 (e) In each general election year in which a political committee, political fund,
4.6 or party unit makes expenditures that, in the aggregate, exceed \$100 to advocate the
4.7 retention or defeat of a candidate for judicial office, reports must be filed 42 days and ten
4.8 days before the retention election.

4.9 Sec. 6. Minnesota Statutes 2010, section 204B.06, subdivision 6, is amended to read:

4.10 Subd. 6. **Judicial retention candidates; designation of term office.** ~~An individual~~
4.11 A justice or judge who files as a retention candidate for the office of chief justice or
4.12 associate justice of the Supreme Court, judge of the Court of Appeals, or judge of the
4.13 district court shall state in the affidavit of candidacy the office of the particular justice or
4.14 judge for which the individual is a retention candidate. The individual shall be a retention
4.15 candidate only for the office identified in the affidavit. Each justice of the Supreme
4.16 Court and each Court of Appeals and district court judge is deemed to hold a separate
4.17 nonpartisan office.

4.18 Sec. 7. Minnesota Statutes 2010, section 204B.11, is amended by adding a subdivision
4.19 to read:

4.20 Subd. 3. **Judicial performance evaluation fee.** At the time of filing an affidavit of
4.21 candidacy, in addition to the filing fee prescribed by subdivision 1, a candidate for justice
4.22 of the Supreme Court, judge of the Court of Appeals, or judge of the district court shall
4.23 pay to the filing officer a judicial performance evaluation fee of \$..... Fees received by the
4.24 filing officer must immediately be paid to the commissioner of management and budget,
4.25 who must deposit them in the state treasury and credit them to the judicial performance
4.26 evaluation fee account established by section 480B.05, subdivision 2.

4.27 Sec. 8. Minnesota Statutes 2010, section 204B.34, subdivision 3, is amended to read:

4.28 Subd. 3. **Judicial elections.** When one or more justices of the Supreme Court or
4.29 judges of the Court of Appeals or of a district court ~~are to be nominated at the same~~
4.30 ~~primary or elected at the same general election~~ have filed for retention election, the
4.31 notice of election shall state the name of each justice or judge ~~whose successor is to~~
4.32 ~~be nominated or elected~~ seeking retention.

5.1 Sec. 9. Minnesota Statutes 2010, section 204B.36, subdivision 4, is amended to read:

5.2 Subd. 4. **Judicial retention candidates.** ~~The official ballot shall contain the names~~
 5.3 ~~of all candidates for each judicial office and shall state the number of those candidates for~~
 5.4 ~~whom a voter may vote.~~ The official ballot shall contain the names of all justices or judges
 5.5 seeking to retain their offices. Each seat for an associate justice, associate judge, or judge
 5.6 of the district court must be numbered. The words "SUPREME COURT," "COURT OF
 5.7 APPEALS," and "(number) DISTRICT COURT" must be printed above the respective
 5.8 judicial office groups on the ballot. The title of each judicial office shall be printed on
 5.9 the official primary and general election ballot as follows:

5.10 ~~(a)~~ (1) In the case of the Supreme Court:

5.11 "Chief justice";

5.12 "Associate justice (number)";

5.13 ~~(b)~~ (2) In the case of the Court of Appeals:

5.14 "Judge (number)"; or

5.15 ~~(c)~~ (3) In the case of the district court:

5.16 "Judge (number)."

5.17 Sec. 10. **[204D.30] RETENTION OF JUDGES.**

5.18 (a) Within the time period established by section 204B.09, a judge seeking to retain
 5.19 judicial office shall file an affidavit of candidacy with the secretary of state. Judges
 5.20 who have filed an affidavit of candidacy as provided in this section must be placed on
 5.21 the appropriate official ballot at the next regular general election under a nonpartisan
 5.22 designation in the form provided in section 204B.36, subdivision 4.

5.23 (b) If a majority of those voting on a judicial retention question votes "No," then
 5.24 upon the expiration of the term for which the judge was serving, a vacancy exists which
 5.25 must be filled as provided by law. A judge who loses a retention election may not be
 5.26 appointed to fill the resulting vacancy. If a majority of those voting on the question votes
 5.27 "Yes," the judge shall be retained in office for an eight-year term, beginning the first
 5.28 Monday in January following the retention election and subject to removal as provided
 5.29 by the Minnesota Constitution.

5.30 (c) A judge seeking to retain judicial office is considered a candidate for election to
 5.31 that office. A judicial retention election is not a ballot question for the purposes of the
 5.32 Minnesota Election Law.

5.33 Sec. 11. Minnesota Statutes 2010, section 480B.01, subdivision 1, is amended to read:

6.1 Subdivision 1. **Judicial vacancies.** If a judge of the Supreme Court, Court of
 6.2 Appeals, district court, or Workers' Compensation Court of Appeals dies, resigns, retires,
 6.3 or is removed during the judge's term of office, or if a new Supreme Court, Court of
 6.4 Appeals, district, or Workers' Compensation Court of Appeals judgeship is created, the
 6.5 resulting vacancy must be filled by the governor as provided in this section.

6.6 Sec. 12. Minnesota Statutes 2010, section 480B.01, subdivision 10, is amended to read:

6.7 Subd. 10. **Merit selection commission; notice to the public.** Upon receiving
 6.8 notice from the governor that a judicial vacancy has occurred or will occur on a specified
 6.9 date, the chair shall provide notice of the following information:

6.10 (1) the office that is or will be vacant;

6.11 (2) that applications from qualified persons or on behalf of qualified persons are
 6.12 being accepted by the merit selection commission;

6.13 (3) that application forms may be obtained from the governor or the merit selection
 6.14 commission at a named address; and

6.15 (4) that application forms must be returned to the merit selection commission by
 6.16 a named date.

6.17 For a district court vacancy, the notice must be made available to attorney
 6.18 associations in the judicial district where the vacancy has occurred or will occur and to at
 6.19 least one newspaper of general circulation in each county in the district. For a Supreme
 6.20 Court, Court of Appeals, or Workers' Compensation Court of Appeals vacancy, the notice
 6.21 must be given to state attorney associations and all forms of the public media.

6.22 Sec. 13. **[480B.03] JUDICIAL RETENTION ELECTIONS.**

6.23 Judicial retention elections must be conducted consistent with the procedures
 6.24 established by law for the administration of state general elections. Judges standing for
 6.25 retention must be placed on the ballot as provided in section 204D.30.

6.26 Sec. 14. **[490A.04] JUDICIAL PERFORMANCE EVALUATION COMMISSION.**

6.27 Subdivision 1. Establishment. A Judicial Performance Evaluation Commission
 6.28 is established and shall be an independent body not subject to the direct control of any
 6.29 branch of government.

6.30 Subd. 2. Purpose of commission. After public hearings, the commission shall
 6.31 adopt and administer for all judges a process for evaluating judicial performance.

6.32 The performance review process must be designed to assist voters in evaluating the

7.1 performance of judges standing for retention, facilitate self-improvement of all judges,
7.2 and promote public accountability of the judiciary.

7.3 Subd. 3. **Composition; appointment of commission members.** (a)(1) The
7.4 commission is composed of 24 members. All members of the commission must be
7.5 residents of Minnesota at the time of their appointment and for the duration of their term.

7.6 (2) Sitting judges and public officials, as defined in section 10A.01, subdivision 35,
7.7 may not be appointed or serve on the commission. A person may not simultaneously serve
7.8 as either a member of the Commission on Judicial Selection established in section 480B.01
7.9 or the Board on Judicial Standards established in section 490A.01 while also serving as a
7.10 member of the Judicial Performance Evaluation Commission established in this section.
7.11 Members of the commission who are attorneys at the time of their appointment must have
7.12 been admitted to practice before the Minnesota Supreme Court for not less than five years.

7.13 (b) Members of the commission must be appointed and serve as follows:

7.14 (1) the governor shall appoint a total of eight members, no more than three of whom
7.15 may be attorneys at the time of their appointment. Gubernatorial appointees serve on the
7.16 commission until the governor who made the appointment leaves office or for a four-year
7.17 term, whichever comes first;

7.18 (2) the Supreme Court shall appoint a total of eight members. The court shall
7.19 designate one of the appointees to serve as chair of the commission. No more than four
7.20 of the appointees may be attorneys at the time of the appointment. The Supreme Court's
7.21 appointees serve on the commission for a four-year term; and

7.22 (3) the legislature shall appoint a total of eight members, no more than four of whom
7.23 may be attorneys at the time of the appointment. Legislative appointments must be made
7.24 sequentially as follows: the speaker of the house shall appoint one member, the minority
7.25 leader of the house of representatives shall appoint one member, the senate majority leader
7.26 shall appoint one member, and the senate minority leader shall appoint one member. After
7.27 each appointing authority has made the appointments as provided in this clause, a second
7.28 round of appointments must be made in the same sequence. Legislative appointees serve
7.29 on the commission for a two-year term.

7.30 Members of the commission are eligible for reappointment up to two additional full
7.31 terms. Upon expiration of a member's term, the member shall continue to serve until a
7.32 successor is appointed and qualified. In the case of a vacancy on the commission, the
7.33 authority who appointed the member whose seat has become vacant shall appoint a person
7.34 to fill the vacancy for the remainder of the unexpired term.

7.35 (c) In making appointments, the governor, Supreme Court, and the legislature shall
7.36 include qualified members of minority groups as well as consider the importance of

8.1 balanced geographic representation, and appoint individuals of outstanding competence
8.2 and reputation. The governor, Supreme Court, and the legislature must consult with one
8.3 another to ensure the requirements of this paragraph are met.

8.4 (d) Members shall perform commission duties in an impartial and objective manner
8.5 and shall base their recommendations solely upon matters that are in the record developed
8.6 by the commission. A member who violates this paragraph may be removed from the
8.7 commission by majority vote of the commission's membership.

8.8 (e) A member may be removed by the appointing authority at any time for cause,
8.9 after notice and hearing, or after missing three consecutive meetings. After a member
8.10 misses two consecutive meetings and before the next meeting, the secretary of the
8.11 commission shall notify the member in writing that the member may be removed if the
8.12 member misses the next meeting. The chair of the commission shall inform the appointing
8.13 authority if a member misses three consecutive meetings.

8.14 (f) A commission member shall serve without compensation but may be reimbursed
8.15 for expenses associated with the member's work on the commission.

8.16 (g) The commission shall appoint an executive secretary to provide administrative
8.17 assistance and coordinate the work of the commission. The Board on Judicial Standards
8.18 shall provide additional support as necessary to facilitate the commission's work, upon
8.19 request of the commission.

8.20 Subd. 4. **Meetings and data.** Meetings of the Judicial Performance Evaluation
8.21 Commission must be open to the public, except that a meeting held to evaluate the
8.22 performance of a judge may be closed to discuss issues related to the judge's health or
8.23 allegations against the judge that may be defamatory. Data collected by the commission
8.24 must be made available to the public, except where otherwise provided in this section.

8.25 Subd. 5. **Standards and procedures.** (a) The Judicial Performance Evaluation
8.26 Commission shall develop written standards, subject to approval of the Supreme Court
8.27 in its entirety, by which judicial performance is to be evaluated. The standards must
8.28 be periodically updated and must include knowledge of the law, procedure, integrity,
8.29 impartiality, temperament, respect for litigants, respect for the rule of law, administrative
8.30 skill, punctuality, and communication skills. The commission must not evaluate judicial
8.31 performance based on substantive legal issues or opinions that are subject to standard
8.32 appellate processes.

8.33 (b) The commission shall adopt procedures for collecting information and
8.34 conducting reviews and shall create and implement a program of periodic review of the
8.35 performance of each judge. The commission must request public comment on these
8.36 procedures before adoption.

9.1 Subd. 6. **Surveys.** (a) Midway through a judge's term and again no fewer than nine
9.2 months before the date of a judge's retention election, the commission must distribute
9.3 anonymous survey forms eliciting performance evaluations of the judge to a representative
9.4 sampling of attorneys, litigants, other judges, and other persons who have been in direct
9.5 contact with the judge being evaluated and who have direct knowledge of the judge's
9.6 judicial performance during the evaluation period.

9.7 (b) The commission must employ or contract with qualified individuals to prepare
9.8 survey forms, process responses, and compile the statistical reports of the survey results in
9.9 a manner that ensures confidentiality and accuracy.

9.10 (c) Each survey conducted must seek evaluations in accordance with the written
9.11 performance standards adopted as provided in paragraph (a) and must solicit narrative
9.12 comments regarding the judge's performance. Narrative comments contained in a survey
9.13 response, and data on an individual who completes or responds to a survey form must not
9.14 be made available to the public.

9.15 Subd. 7. **Midterm evaluation.** The commission shall evaluate each judge halfway
9.16 through the judge's term, as nearly as practicable, to provide feedback to the judge about
9.17 the judge's performance and to give the judge an opportunity for improvement. The
9.18 commission shall adopt procedures for conducting the midterm evaluation.

9.19 Subd. 8. **Retention-year evaluation.** (a) In each year in which a judge has the
9.20 opportunity to file as a candidate for retention, the Judicial Performance Evaluation
9.21 Commission must conduct an evaluation of the judge and determine whether the
9.22 judge meets or does not meet judicial performance standards. Upon completion of
9.23 the evaluation, the commission must rate the judge "well-qualified," "qualified," or
9.24 "unqualified" for office. A rating of "unqualified" does not prohibit a judge from seeking
9.25 retention by the voters.

9.26 (b) The evaluation of a judge must include a public hearing and an opportunity
9.27 for submission of written public comments on the performance of a judge standing for
9.28 retention. Before accepting public comment and conducting a hearing, the commission
9.29 must notify each judge to be evaluated of the process for conducting the evaluation and
9.30 the judge's right to submit written comments and appear in person at the hearing. The
9.31 hearing and evaluation may be conducted by a panel of commission members, as provided
9.32 in subdivision 9.

9.33 (c) A judge who does not intend to seek retention may waive the evaluation process
9.34 by providing written notice to the commission affirming the judge's intention to not file as
9.35 a retention candidate for the judge's current office. If a judge waives the evaluation under

10.1 this paragraph, the judge is not eligible to file an affidavit of candidacy for the office and is
10.2 not eligible to be appointed to fill the resulting vacancy.

10.3 Subd. 9. **Evaluation panels; review by full commission.** (a) The evaluation of a
10.4 judge may be conducted by an evaluation panel. An evaluation panel is composed of five
10.5 members, including at least one member appointed by each branch of government, but
10.6 otherwise chosen randomly. A panel must report its results to the full commission. The
10.7 full commission shall review a panel's evaluation if the panel rates a judge unqualified,
10.8 or if one panelist or three members of the commission request a review within 15 days
10.9 after the panel makes its report. The commission may overturn a panel's rating. If a
10.10 panel's report and rating is not reviewed, the panel's determination is final. Decisions of an
10.11 evaluation panel or the full commission regarding a judge's performance are not subject
10.12 to judicial review.

10.13 (b) If an evaluation is reviewed by the full commission, the commission shall
10.14 provide written notice to the affected judge. The judge has the right to submit written
10.15 comments to the commission and to appear before and be heard by the commission prior
10.16 to a final vote of the commission members regarding the judge's performance.

10.17 Subd. 10. **Publication of evaluation results.** Following the evaluation of a judge,
10.18 the commission shall compile a factual report on the judicial performance of the judge,
10.19 including the final rating assigned to the judge's performance. The report must be made
10.20 available to the public at least one month before the time period established in section
10.21 204B.09 for filing an affidavit of candidacy with the secretary of state.

10.22 Sec. 15. **JUDICIAL PERFORMANCE EVALUATION COMMISSION; FIRST**
10.23 **MEETING; TRANSITION.**

10.24 (a) Initial appointments must be made to the Judicial Performance Evaluation
10.25 Commission on July 1, 2013.

10.26 (b) Initial appointees shall serve for a term ending January 15, 2015, and may be
10.27 considered for reappointment as provided in this article at that time. The chair of the
10.28 commission must convene the first full meeting of the commission no later than August
10.29 1, 2013, and appoint a secretary for the commission at that first meeting. The Board on
10.30 Judicial Standards shall provide administrative and other support as required to assist in
10.31 convening the meeting.

10.32 Sec. 16. **REPEALER.**

10.33 Minnesota Statutes 2010, sections 204B.36, subdivision 5; and 204D.14, subdivision
10.34 3, are repealed.

11.1 Sec. 17. **EFFECTIVE DATE.**

11.2 If the constitutional amendment in article 1 is adopted, this article is effective July
11.3 1, 2013, except that the governor, legislature, and Supreme Court may immediately
11.4 undertake any procedure necessary to consider and select potential appointees to the
11.5 Judicial Performance Evaluation Commission.

APPENDIX
Article locations in 11-1275

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