

A bill for an act relating to elections; proposing an amendment to the Minnesota Constitution, article VI, sections 7 and 8; establishing and modifying procedures for filling judicial vacancies; creating a judicial performance commission; creating a commission on appellate judicial selection; amending Minnesota Statutes 2006, sections 10A.01, subdivisions 7, 10, 15; 204B.06, subdivision 6; 204B.34, subdivision 3; 204B.36, subdivision 4; 480B.01, subdivision 11; proposing coding for new law in Minnesota Statutes, chapters 204D; 480B; repealing Minnesota Statutes 2006, sections 204B.36, subdivision 5; 204D.14, subdivision 3.

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

ARTICLE 1
CONSTITUTIONAL AMENDMENT

Section 1. **CONSTITUTIONAL AMENDMENTS PROPOSED.**

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

~~Sec. 7. The term of office of all judges shall be six years and until their successors are qualified. They~~ Following appointment by the governor, each judge shall initially hold office for a term ending December 31 following the next regularly scheduled general election held more than three years after the appointment. Thereafter, the term of office shall be eight years and until a successor is appointed and qualified and shall commence on the first day of January following the judge's retention election. Judges' retention shall be ~~elected~~ determined by the voters from the area which they ~~are to~~ serve, in the manner provided by law. A judicial performance commission shall evaluate in a nonpartisan manner the performance of judges according to criteria that the commission develops and publishes, and such other criteria as may be established by law.

article VI, section 8, will read:

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

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

The proposed amendment must be submitted to the people at the 2008 general election. The question submitted must be:

"Shall the Minnesota Constitution be amended to provide that judges shall be appointed by the governor from a list of names submitted by a selection commission, evaluated based on performance before standing for a retention election to the office, and then retained or removed regularly based on a decision by the voters?"

Yes

No"

ARTICLE 2
STATUTORY PROVISIONS

Section 1. Minnesota Statutes 2006, section 10A.01, subdivision 7, is amended to read:

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

Sec. 2. Minnesota Statutes 2006, section 10A.01, subdivision 10, is amended to read:

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

H.F. No. 3023, 1st Engrossment - 2007-2008th Legislative Session (2007-2008)

Sec. 3. Minnesota Statutes 2006, section 10A.01, subdivision 15, is amended to read:

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

Sec. 4. Minnesota Statutes 2006, section 204B.06, subdivision 6, is amended to read:

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

Sec. 5. Minnesota Statutes 2006, section 204B.34, subdivision 3, is amended to read:

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

Sec. 6. Minnesota Statutes 2006, section 204B.36, subdivision 4, is amended to read:

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

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

"Chief justice";

"Associate justice (number)";

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

"Judge (number)"; or

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

"Judge (number)."

(b) A judicial retention election shall be placed on the ballot as a question, as provided in subdivision 3. The question shall appear in substantially the following form: "Shall (name of judge) of the (district court, court of appeals, or supreme court) be retained in office?"

Sec. 7. **[204D.30] RETENTION OF JUDGES.**

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

(b) If a majority of those voting on the question votes "No," then upon the expiration of the term for which the judge was serving, a vacancy shall exist, which shall be filled as provided in chapter 480B. If a majority of those voting on the question vote "Yes," the judge shall remain in office for an eight-year term, subject to removal as provided by the Minnesota Constitution. A judge who loses a retention election shall be ineligible to be nominated to fill the resulting vacancy.

(c) A judge seeking to retain judicial office shall be considered a candidate for election to that office. A judicial retention election is not a ballot question for the purposes of the Minnesota election law.

Sec. 8. Minnesota Statutes 2006, section 480B.01, subdivision 11, is amended to read:

~~Subd. 11. **Nominees to governor.** Within 60 days after the receipt of a notice of a judicial vacancy, the committee shall recommend to the governor no fewer than three and no more than five nominees for each judicial vacancy. The names of the nominees must be made public. The governor may fill the vacancy from the nominees recommended by the commission. If the governor declines to select a nominee to fill the vacancy from the list of nominees, or if no list is submitted to the governor under this subdivision, the governor may select a person to fill the vacancy without regard to the commission's recommendation. If fewer than 60 days remain in the term of office of a governor who will not succeed to another term, the governor may fill a vacancy without waiting for the commission to recommend a list of nominees. Within 60 days from the occurrence of a vacancy in the office of judge, the commission on judicial selection shall submit to the governor the names of three candidates nominated by the commission for the vacancy. The names of the nominees must be made public. The governor shall appoint a qualified~~

person to fill the vacancy from that list of three candidates or may direct the commission to nominate three additional candidates from which the governor shall appoint a qualified person to fill the vacancy. If the governor directs the commission to nominate additional candidates, the commission must submit its list of nominees to the governor within 60 days. If the governor requests an additional set of nominees, the appointment must be made from the new set. If the commission does not submit a list of nominees within the required time frame, the governor may appoint any qualified individual to fill the vacancy without regard to the commission's work.

Sec. 9. [480B.02] COMMISSION ON APPELLATE JUDICIAL SELECTION.

Subdivision 1. Commission on Appellate Judicial Selection. (a) A Commission on Appellate Judicial Selection is established in the judicial branch. The commission shall be composed of 11 members. In addition to the provisions established in this section, the commission shall conduct business in the manner specified by section 480B.01, subdivisions 7, 9, 10, and 12.

(b) All members of the commission must be residents of the state of Minnesota at the time of their appointment and for the duration of their term. Members of the commission may not serve as a public official as defined in section 10A.01, subdivision 35, while a member of the commission. Members of the commission who are attorneys must have been admitted to practice before the Minnesota Supreme Court for not less than five years. Members shall be eligible for reappointment up to two additional full terms. Members of the commission who would otherwise be eligible to hold judicial office may not be considered or appointed to fill a judicial vacancy while they are members of the commission or for one year following the end of membership on the commission.

Subd. 2. Commission members. (a) Members of the commission shall be appointed and serve as follows:

(1) the governor shall appoint five members of the commission, one of whom must be appointed to serve as commission chair. Gubernatorial appointees shall serve on the commission until the governor who made the appointment leaves office or for a term of four years, whichever comes first;

(2) the chief justice of the Supreme Court shall appoint two members of the commission. The chief justice's appointees shall serve on the commission for a four-year term; and

(3) the legislature shall appoint a total of four members. Legislative appointments shall be made sequentially as follows: the speaker of the house shall appoint one member, the majority leader of the senate shall appoint one member, the minority leader of the

house shall appoint one member, and the minority leader of the senate shall appoint one member. Legislative appointees shall serve on the commission for a two-year term.

(b) In making appointments, the governor, chief justice, and legislative leaders must consider the diversity of the state's population, as well as the importance of balanced geographic representation, and appoint individuals of outstanding competence and reputation. The governor, chief justice, and legislative leaders should consult with one another to ensure the requirements of this paragraph are met.

(c) A member may be removed by the appointing authority at any time (1) for cause, after notice and hearing, or (2) after missing three consecutive meetings. The chair of the board shall inform the appointing authority of a member missing the three consecutive meetings. After the second consecutive missed meeting and before the next meeting, the secretary of the board shall notify the member in writing that the member may be removed for missing the next meeting.

(d) In the case of a vacancy on the board, the appointing authority shall appoint a person to fill the vacancy for the remainder of the unexpired term.

Subd. 3. Nominations. (a) Within 60 days from the occurrence of a vacancy in the office of appellate judge, the Appellate Judicial Merit Selection Commission shall submit to the governor the names of three candidates nominated by the commission for the vacancy. The governor shall appoint a qualified person to fill the vacancy from that list of three candidates or may direct the commission to nominate three additional candidates from which the governor shall appoint a qualified person to fill the vacancy. If the governor directs the commission to nominate additional candidates, the commission must submit its list of nominees to the governor within 60 days. If the governor requests an additional set of nominees, the appointment must be made from the new set. If the commission does not submit a list of nominees within the required time frame, the governor may appoint any qualified individual to fill the vacancy without regard to the commission's work.

(b) The commission must nominate qualified persons to fill a judicial vacancy based on the following criteria: integrity, legal knowledge, communication skills, judicial temperament, the ability to promote trust and confidence in the judiciary, common sense, experience, and diversity. The principal consideration in nominating a candidate for a vacancy shall be merit. The commission must make nominations in an impartial and objective manner without regard for the political affiliation of the nominee or the governor.

Sec. 10. [480B.03] JUDICIAL PERFORMANCE COMMISSION.

Subdivision 1. Purpose of commission. A Judicial Performance Commission is established in the judicial branch. After public hearings, the commission shall adopt and

administer for all judges a process for evaluating judicial performance. The performance review process must be designed to assist voters in evaluating the performance of judges standing for retention, facilitate self-improvement of all judges, and promote the public accountability of the judiciary.

Subd. 2. **Commission members.** (a) The Judicial Performance Commission shall be composed of 25 members. All members of the commission must be residents of Minnesota at the time of their appointment and for the duration of their term. A member of the commission may not serve as a public official, as defined in section 10A.01, subdivision 35, while a member of the commission. Members of the commission who are attorneys must have been admitted to practice before the Minnesota Supreme Court for not less than five years. Members of the commission shall be eligible for reappointment up to two additional full terms.

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

(1) the governor shall appoint a total of nine members. Gubernatorial appointees shall serve on the commission until the governor who made the appointment leaves office or for a term of four years, whichever comes first;

(2) the chief justice of the Supreme Court shall appoint a total of eight members. The chief justice may only appoint individuals who are sitting or former Minnesota state court judges. The chief justice shall select one of the appointees to serve as chair of the commission. The chief justice's appointees shall serve on the commission for a four-year term; and

(3) the legislature shall appoint a total of eight members. Legislative appointments shall be made sequentially as follows: the speaker of the house shall appoint one member, the majority leader of the senate shall appoint one member, the minority leader of the house shall appoint one member, and the minority leader of the senate shall appoint one member. After each legislative leader has made one appointment as provided in this clause, a second round of appointments shall be made in the same sequence. Legislative appointees shall serve on the commission for a two-year term.

(c) In making appointments, the governor, chief justice, and legislative leaders must consider the diversity of the state's population, as well as the importance of balanced geographic representation, and appoint individuals of outstanding competence and reputation. The governor, chief justice, and legislative leaders should consult with one another to ensure the requirements of this paragraph are met.

(d) Members shall perform their duties in an impartial and objective manner and shall base their recommendations solely upon matters that are in the record developed by the commission.

8.1 (e) A member may be removed by the appointing authority at any time (1) for
8.2 cause, after notice and hearing, or (2) after missing three consecutive meetings. The
8.3 chair of the board shall inform the appointing authority of a member missing the three
8.4 consecutive meetings. After the second consecutive missed meeting and before the next
8.5 meeting, the secretary of the board shall notify the member in writing that the member
8.6 may be removed for missing the next meeting.

8.7 (f) In the case of a vacancy on the board, the appointing authority shall appoint a
8.8 person to fill the vacancy for the remainder of the unexpired term.

8.9 Subd. 3. **Meetings and data.** All meetings of the Judicial Performance Commission
8.10 are subject to the requirements of chapter 13D. Notwithstanding section 13.90, and except
8.11 as otherwise provided in this section, data collected by the commission is public data
8.12 pursuant to section 13.03, subdivision 1.

8.13 Subd. 4. **Authority of commission.** (a) The Judicial Performance Commission shall
8.14 develop written standards, subject to approval by the supreme court, by which judicial
8.15 performance is to be evaluated. The standards shall be periodically updated and must
8.16 include knowledge of the law, procedure, integrity, impartiality, temperament, respect for
8.17 litigants, respect for the rule of law, administrative skill, punctuality, and communication
8.18 skills. The commission may not evaluate judicial performance based on substantive legal
8.19 issues or opinions subject to standard appellate processes.

8.20 (b) The commission shall establish procedures for collecting information and
8.21 conducting reviews and shall create and implement a program of periodic review of the
8.22 performance of each judge. The commission must request public comment. Hearings
8.23 shall be conducted on the performance of all judges prior to a final determination as to
8.24 whether a judge meets or does not meet judicial performance standards. Hearings may be
8.25 conducted by a panel of commission members, as provided in subdivision 8.

8.26 Subd. 5. **Surveys.** (a) Midway through a judge's term and again no fewer than nine
8.27 months before the date of the election for retention of the judge's position, anonymous
8.28 survey forms eliciting performance evaluations shall be distributed to a representative
8.29 sampling of attorneys, litigants, other judges, and other persons who have been in direct
8.30 contact with each judge being evaluated and who have direct knowledge of the judge's
8.31 judicial performance during the evaluation period. The Supreme Court may adopt a rule
8.32 establishing standards for survey procedures.

8.33 (b) The Judicial Performance Commission shall employ or contract with qualified
8.34 individuals to prepare survey forms, process the survey responses, and compile the
8.35 statistical reports of the survey results in a manner designed to ensure confidentiality
8.36 and accuracy.

9.1 (c) The survey forms shall seek evaluations in accordance with the written
9.2 performance standards approved by the Supreme Court and must solicit narrative
9.3 comments regarding the judge's performance. Narrative comments shall be classified as
9.4 private. In each election year, prior to making its final evaluation, the commission shall
9.5 request written public comments and hold public hearings with respect to judges standing
9.6 for retention.

9.7 Subd. 6. **Midterm evaluation.** The commission shall evaluate each judge halfway
9.8 through the judge's term, as nearly as practicable, to provide feedback to the judge about
9.9 the judge's performance and to give the judge an opportunity for improvement.

9.10 Subd. 7. **Final evaluation.** A judge seeking to be retained in office shall notify the
9.11 commission in writing at least one year before the judge's term expires. An evaluation
9.12 panel shall conduct an evaluation of the judge, and declare the judge "qualified" or
9.13 "unqualified" for office. A declaration of "unqualified" shall not prohibit a judge from
9.14 seeking retention by the voters.

9.15 Subd. 8. **Evaluation panels; review by full commission.** (a) An evaluation panel
9.16 shall consist of five members, including at least one member appointed by each branch
9.17 of government, but otherwise chosen randomly. A district judge who serves as a panel
9.18 member may not evaluate another district judge who sits in the same judicial district. A
9.19 panel must report its results to the full commission. The full commission shall review a
9.20 panel's evaluation if the panel declares a judge unqualified, or if one panelist or three
9.21 members of the commission request a review within 15 days after the panel makes its
9.22 report. The commission may overturn a panel's decision. If a panel's decision is not
9.23 reviewed, the determination of the panel shall be final.

9.24 (b) If an evaluation is reviewed by the full commission, the commission shall
9.25 provide written notice to the affected judge. The judge shall have the right to submit
9.26 written comments to the commission and to appear and be heard by the commission
9.27 prior to the final vote of the commission.

9.28 Subd. 9. **Publication of evaluation results.** Following a final evaluation, the
9.29 commission shall compile a factual report on the judicial performance of each judge
9.30 standing for retention and shall make the report available to the public one month before
9.31 the time period established in section 204B.09 for filing an affidavit of candidacy with
9.32 the secretary of state.

9.33 Subd. 10. **Rules.** The commission may adopt rules establishing additional criteria
9.34 for evaluating judges and ensuring efficient performance of the commission's duties. For
9.35 purposes of this subdivision, the commission is an agency under chapter 14.

Sec. 11. **[480B.05] JUDICIAL RETENTION ELECTIONS.**

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

Sec. 12. **[480B.07] REQUIREMENTS FOR SERVICE ON COMMISSIONS.**

Subdivision 1. Service on multiple commissions prohibited. A person may not simultaneously serve on two or more commissions established under this chapter.

Subd. 2. Service until appointment of successors. Members of commissions established under this chapter continue to serve until their successors have been appointed and qualified.

Sec. 13. **[480B.09] TELEPHONIC OR ELECTRONIC PARTICIPATION IN MEETINGS.**

(a) If compliance with section 13D.02 is impractical, any of the commissions established under this chapter may conduct a meeting of its members by telephone or other electronic means, so long as the following conditions are met:

(1) all members of the commission participating in the meeting, wherever their physical location, can hear one another and can hear all discussion and testimony;

(2) all members of the public present at the regular meeting location can clearly hear all discussion and testimony and all votes of members;

(3) at least one member of the commission is physically present at the regular meeting location; and

(4) all votes committing funds, finalizing recommendations, and approving contracts are conducted by roll call, so each member's vote on each issue can be identified and recorded.

(b) Each member of the commission participating in a meeting by telephone or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings. If telephone or other electronic means is used to conduct a meeting, the commission, to the extent practical, shall allow a person to monitor the meeting electronically from a remote location. The commission may require the person making such a connection to pay for documented marginal costs that the commission incurs as a result of the additional connection. If telephone or other electronic means is used to conduct a regular, special, or emergency meeting, the commission shall provide notice of the regular meeting location, of the fact that some members may participate by telephone or other electronic means, and of whether and how a person may

11.1 monitor the meeting electronically from a remote location. The timing and method of
11.2 providing notice is governed by section 13D.04.

11.3 Sec. 14. **JUDICIAL PERFORMANCE COMMISSION; FIRST MEETING.**

11.4 The governor and the chief justice must make initial appointments to the Judicial
11.5 Performance Commission no later than 90 days following adoption of the constitutional
11.6 amendment proposed in article 1. The chair of the commission, as appointed by the chief
11.7 justice, must convene the first full meeting of the commission no later than 30 days after
11.8 all members of the commission have been appointed.

11.9 Sec. 15. **REPEALER.**

11.10 Minnesota Statutes 2006, sections 204B.36, subdivision 5; and 204D.14, subdivision
11.11 3, are repealed.

11.12 Sec. 16. **EFFECTIVE DATE.**

11.13 Article 2 is effective upon adoption of the constitutional amendment proposed in
11.14 article 1.

APPENDIX
Article locations in H3023-1

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APPENDIX
Repealed Minnesota Statutes: H3023-1

204B.36 BALLOTS; FORM.

Subd. 5. **Designation of incumbent; judicial offices.** If a chief justice, associate justice, or judge is a candidate to succeed again, the word "incumbent" shall be printed after that judge's name as a candidate.

204D.14 CANARY BALLOTS; NONPARTISAN OFFICES.

Subd. 3. **Uncontested judicial offices.** Judicial offices for a specific court for which there is only one candidate filed must appear after all other judicial offices for that same court on the canary ballot.