

A bill for an act

relating to judicial selection; proposing an amendment to the Minnesota Constitution, article VI, sections 7 and 8; establishing retention elections for judges; creating an independent judicial performance commission; amending Minnesota Statutes 2008, sections 10A.01, subdivisions 7, 10, 15; 10A.14, subdivision 1; 10A.20, subdivision 2, by adding a subdivision; 204B.06, subdivision 6; 204B.11, subdivision 1; 204B.34, subdivision 3; 204B.36, subdivision 4; proposing coding for new law in Minnesota Statutes, chapters 13; 204D; 480B; repealing Minnesota Statutes 2008, 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 AMENDMENT 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 the first Monday of January following the next regularly scheduled general election held more than three years after the appointment. Thereafter, the judge's term of office shall be eight years and until a successor is appointed and qualified. Judges' retention shall be ~~elected~~ determined by the voters from the area which they ~~are to~~ serve, in the manner provided by law. An independent judicial performance commission shall evaluate in a nonpartisan manner the performance of judges according to criteria that the commission develops and publishes, and any 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.~~

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

The proposed amendment must be submitted to the people at the 2010 general election. The question submitted must be:

"Shall the Minnesota Constitution be amended to reaffirm the impartiality of the judiciary by providing that all judges be appointed by the governor, with their continuation in office determined at a retention election after a public, nonpartisan evaluation of their performance by a judicial performance commission rather than be determined under the current system of contested elections?"

Yes

No"

Sec. 3. **TRANSITION.**

Any judge currently seated or elected at the time the constitutional amendment provided in section 1 is adopted shall complete the remainder of the judge's term as it existed before adoption of the amendment. A judge who is elected at the 2010 general election will serve a term of six years. Following completion of their terms, these judges are subject to the retention election process as provided in the constitution and may file for retention following the procedures described in article 2.

ARTICLE 2

STATUTORY PROVISIONS

Section 1. Minnesota Statutes 2008, 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, other than lobbying 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 2008, 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 2008, 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 2008, 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 earlier 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 2008, 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) ~~and (c)~~ to (d).

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, political fund, or party unit
3.33 must file reports 15 days before a primary and ten days before a general election.

(d) In each general election year in which a political committee, political fund, or party unit makes expenditures that, in the aggregate, exceed \$100 to advocate the retention or defeat of a candidate for judicial office, reports must be filed 90 days, 60 days, and 30 days before the retention election.

Sec. 6. Minnesota Statutes 2008, section 10A.20, is amended by adding a subdivision to read:

Subd. 6c. **Independent expenditures; judicial retention.** (a) An individual, corporation, association, political committee, political party unit, or political fund must file a report with the board each time the individual, corporation, association, political committee, political party unit, or political fund makes or contracts to make, at any time up to and including the 20th day before an election, independent expenditures in an aggregate amount in excess of \$1,000 to advocate the retention or defeat of a candidate for judicial office. The report must be filed within 48 hours after initially making or contracting to make the expenditures. An additional report must be filed within 48 hours after each time an independent expenditure in an aggregate amount in excess of \$1,000 is made or contracted to be made, up to and including the 20th day before a retention election. The report must include the information required to be reported under subdivision 3, paragraph (g), except that if the expenditure is reported at the time it is contracted, the report must include the contract amount.

(b) An individual, political committee, political party unit, or political fund must file a report with the board each time the individual, political committee, political party unit, or political fund makes or contracts to make, between the 19th day and the last day before an election, an independent expenditure in an aggregate amount in excess of \$100 to advocate the retention or defeat of a candidate for judicial office. The report must be filed within 24 hours after initially making or contracting to make such expenditures. An additional report must be filed within 24 hours after making or contracting to make an independent expenditure in an aggregate amount in excess of \$100 at any time up to and including the 20th day before a retention election. The report must include the information required to be reported under subdivision 3, paragraph (g), except that if the expenditure is reported at the time it is contracted, the report must include the contract amount.

(c) An individual, corporation, association, political committee, political party unit, or political fund that must file a report under this subdivision must also provide a copy of the report to the candidate, by certified mail, sent within the time period required for filing that same report with the board as provided in paragraphs (a) and (b).

Sec. 7. [13.95] INDEPENDENT JUDICIAL PERFORMANCE COMMISSION.

Data of the Independent Judicial Performance Commission is classified and governed as provided in section 480B.02.

Sec. 8. Minnesota Statutes 2008, 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. 9. Minnesota Statutes 2008, section 204B.11, subdivision 1, is amended to read:

Subdivision 1. **Amount; dishonored checks; consequences.** Except as provided by subdivision 2, a filing fee shall be paid by each candidate who files an affidavit of candidacy. The fee shall be paid at the time the affidavit is filed. The amount of the filing fee shall vary with the office sought as follows:

~~(a)~~ (1) for the office of governor, lieutenant governor, attorney general, state auditor, secretary of state, or representative in Congress, \$300;

(2) for judge of the Supreme Court, judge of the Court of Appeals, or judge of the district court, \$300, plus a judicial performance evaluation fee, to be sent to the judicial performance evaluation fee account established in section 480B.06, subdivision 2, of \$.....;

~~(b)~~ (3) for the office of senator in Congress, \$400;

~~(c)~~ (4) for office of senator or representative in the legislature, \$100;

~~(d)~~ (5) for a county office, \$50; and

~~(e)~~ (6) for the office of soil and water conservation district supervisor, \$20.

For the office of presidential elector, and for those offices for which no compensation is provided, no filing fee is required.

The filing fees received by the county auditor shall immediately be paid to the county treasurer. The filing fees received by the secretary of state shall immediately be paid to the commissioner of management and budget.

When an affidavit of candidacy has been filed with the appropriate filing officer and the requisite filing fee has been paid, the filing fee shall not be refunded. If a candidate's

filing fee is paid with a check, draft, or similar negotiable instrument for which sufficient funds are not available or that is dishonored, notice to the candidate of the worthless instrument must be sent by the filing officer via registered mail no later than immediately upon the closing of the filing deadline with return receipt requested. The candidate will have five days from the time the filing officer receives proof of receipt to issue a check or other instrument for which sufficient funds are available. The candidate issuing the worthless instrument is liable for a service charge pursuant to section 604.113. If adequate payment is not made, the name of the candidate must not appear on any official ballot and the candidate is liable for all costs incurred by election officials in removing the name from the ballot.

Sec. 10. Minnesota Statutes 2008, 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. 11. Minnesota Statutes 2008, 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:

7.1 "Shall (name of judge) of the (district court, Court of Appeals, or Supreme Court)
7.2 be retained in office?"

7.3 Sec. 12. **[204D.30] RETENTION OF JUDGES.**

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

7.9 (b) If a majority of those voting on the question votes "No," then upon the expiration
7.10 of the term for which the judge was serving, a vacancy exists, which must be filled as
7.11 provided by law. If a majority of those voting on the question votes "Yes," the judge shall
7.12 remain in office for an eight-year term, subject to removal as provided by the Minnesota
7.13 Constitution. A judge who loses a retention election is ineligible to be appointed to fill the
7.14 resulting vacancy.

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

7.18 Sec. 13. **[480B.02] INDEPENDENT JUDICIAL PERFORMANCE**
7.19 **COMMISSION.**

7.20 Subdivision 1. **Establishment.** An Independent Judicial Performance Evaluation
7.21 Commission is established and shall be an independent body not subject to the direct
7.22 control of any branch of government.

7.23 Subd. 2. **Purpose of commission.** After public hearings, the commission shall
7.24 adopt and administer for all judges a process for evaluating judicial performance.
7.25 The performance review process must be designed to assist voters in evaluating the
7.26 performance of judges standing for retention, facilitate self-improvement of all judges,
7.27 and promote public accountability of the judiciary.

7.28 Subd. 3. **Composition; appointment of commission members.** (a) The
7.29 commission is comprised of 24 members. All members of the commission must be
7.30 residents of Minnesota at the time of their appointment and for the duration of their term.
7.31 Sitting judges and public officials, as defined in section 10A.01, subdivision 35, may not
7.32 be appointed or serve on the commission. Members of the commission who are attorneys
7.33 at the time of their appointment must have been admitted to practice before the Minnesota

Supreme Court for not less than five years. Members of the commission are eligible for reappointment up to two additional full terms.

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

(1) the governor shall appoint a total of eight members, no more than four of whom may be attorneys at the time of their appointment. Gubernatorial appointees 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 Supreme Court shall appoint a total of eight members. The court shall designate one of the appointees to serve as chair of the commission. No more than four of the appointees may be attorneys at the time of their appointment. The Supreme Court's appointees serve on the commission for a four-year term; and

(3) the legislature shall appoint a total of eight members, no more than four of whom may be attorneys at the time of their appointment. Legislative appointments must 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 of representatives 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 must be made in the same sequence. Legislative appointees serve on the commission for a two-year term.

In the case of a vacancy on the commission, the authority who appointed the member whose seat has become vacant shall appoint a person to fill the vacancy for the remainder of the unexpired term.

(c) In making appointments, the governor, Supreme Court, 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, Supreme Court, 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. A member who violates this paragraph may be removed from the commission by majority vote of the commission's membership.

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

member misses the next meeting. The chair of the commission shall inform the appointing authority if a member misses three consecutive meetings.

(f) Commission members shall serve without compensation and may not be reimbursed for expenses associated with their work on the commission.

(g) The commission shall appoint an executive secretary to provide administrative assistance and coordinate the work of the commission.

Subd. 4. **Meetings and data.** Meetings of the Independent Judicial Performance Commission are subject to the requirements of chapter 13D, except that a meeting held to evaluate the performance of a judge may only be closed to discuss issues related to the judge's health or allegations against the judge that may be defamatory in nature. The commission is subject to the requirements of chapter 13. Except as otherwise provided in this section, data of the commission are public data pursuant to section 13.03, subdivision 1.

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

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

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

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

(c) Each survey conducted must seek evaluations in accordance with the written performance standards adopted as provided in paragraph (a) and must solicit narrative

comments regarding the judge's performance. Narrative comments contained in a survey response are private data on the judge, as defined in section 13.02, subdivision 12. Other data on an individual who completes or responds to a survey form are private data on that individual.

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

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

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

(c) A judge who does not intend to seek retention may waive the final evaluation process by providing written notice to the commission affirming the judge's intention to not file as a retention candidate for the judge's current office. If a judge waives the final evaluation under this paragraph, the judge is not eligible to file an affidavit of candidacy for the office and is not eligible to be appointed to fill the resulting vacancy.

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

11.1 evaluation panel or the full commission regarding a judge's performance are not subject
11.2 to judicial review.

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

11.7 Subd. 10. **Publication of evaluation results.** Following the final evaluation of a
11.8 judge, the commission shall compile a factual report on the judicial performance of each
11.9 judge intending to stand for retention, including the final rating assigned to the judge's
11.10 performance. The report must be made available to the public at least one month before
11.11 the time period established in section 204B.09 for filing an affidavit of candidacy with
11.12 the secretary of state.

11.13 Sec. 14. **[480B.03] JUDICIAL RETENTION ELECTIONS.**

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

11.17 Sec. 15. **[480B.04] REQUIREMENTS FOR SERVICE ON COMMISSIONS.**

11.18 Subdivision 1. **Service on multiple commissions prohibited.** A person may not
11.19 simultaneously serve on more than one commission established under this chapter.

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

11.23 Sec. 16. **[480B.05] TELEPHONIC OR ELECTRONIC PARTICIPATION IN**
11.24 **MEETINGS.**

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

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

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

11.32 (3) at least one member of the commission is physically present at the regular
11.33 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 telephonic or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings. If telephonic or other electronic means are 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 the connection to pay for documented marginal costs that the commission incurs as a result of the additional connection. If telephonic or other electronic means are 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 telephonic or other electronic means, and of whether and how a person may monitor the meeting electronically from a remote location. The timing and method of providing notice is governed by section 13D.04.

Sec. 17. [480B.06] JUDICIAL PERFORMANCE EVALUATION; FEE.

Subdivision 1. **Authorization.** The Supreme Court, through the Lawyer Registration Office, may assess a judicial performance evaluation fee on each licensed attorney in the state. If imposed, the fee must not exceed \$..... and may only apply to attorneys actively engaged in the practice of law.

Subd. 2. **Creation of account.** The Judicial Performance Evaluation Fee Account is created in the special revenue fund. The state court administrator shall forward fees collected under subdivision 1 to the commissioner of finance who shall deposit them in the state treasury and credit them to this account. Money in the account is appropriated to the Independent Judicial Performance Commission.

Sec. 18. INDEPENDENT JUDICIAL PERFORMANCE COMMISSION; FIRST MEETING; TRANSITION.

(a) Initial appointments must be made to the Independent Judicial Performance Commission on July 1, 2011.

(b) Initial appointees shall serve for a term ending January 15, 2013, and may be considered for reappointment as provided in this article at that time. The chair of the commission must convene the first full meeting of the commission no later than August 1, 2011, and appoint a secretary for the commission at the first meeting.

13.1 (c) The commission is only required to conduct a final retention-year evaluation of
13.2 each judge whose term expires on or before January 5, 2015, but may conduct an initial
13.3 evaluation of these judges to provide an opportunity for improvement if the commission
13.4 determines that it is prepared and equipped to do so. Judges whose terms expire after
13.5 January 5, 2015, are subject to both the midterm and final retention-year evaluations
13.6 required by this article.

13.7 Sec. 19. **REPEALER.**

13.8 Minnesota Statutes 2008, sections 204B.36, subdivision 5; and 204D.14, subdivision
13.9 3, are repealed.

13.10 Sec. 20. **EFFECTIVE DATE.**

13.11 This article is effective July 1, 2011, if the constitutional amendment in article
13.12 1 is adopted. However, if the constitutional amendment is adopted, the governor and
13.13 Supreme Court may immediately undertake any procedure necessary to consider and
13.14 select potential appointees.

APPENDIX
Article locations in H0224-1

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