

HOUSE BILL NO. 173

INTRODUCED BY PAVLOVICH, DAILY, TOOLE, MENAHAN, DRISCOLL,
LYNCH, STIMATZ, QUILICI, JACOBSON, D. BROWN, HARRINGTON

IN THE HOUSE

JANUARY 15, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

 FIRST READING.

JANUARY 24, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 25, 1991 PRINTING REPORT.

JANUARY 26, 1991 ON MOTION, CONSIDERATION PASSED
 UNTIL THE 22ND LEGISLATIVE DAY.

JANUARY 31, 1991 SECOND READING, DO PASS.

FEBRUARY 1, 1991 ENGROSSING REPORT.

FEBRUARY 2, 1991 THIRD READING, PASSED.
 AYES, 93; NOES, 1.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

 FIRST READING.

MARCH 23, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN. REPORT ADOPTED.

MARCH 27, 1991 SECOND READING, CONCURRED IN.

MARCH 28, 1991 THIRD READING, CONCURRED IN.
 AYES, 48; NOES, 0.

 RETURNED TO HOUSE.

IN THE HOUSE

APRIL 1, 1991 RECEIVED FROM SENATE.

 SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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 3

House BILL NO. 1173

INTRODUCED BY *Anthony Paul Zick* *Monahan*
David Smith *Stamps* *Julian Jackson*

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CERTAIN
 5 PROCEDURES OF THE JUDICIAL STANDARDS COMMISSION; CLARIFYING
 6 THAT UPON AN ORDER OF REMOVAL, A JUDICIAL OFFICER'S
 7 RETIREMENT BENEFITS REMAIN THE SAME AS IF HE RETIRED;
 8 MODIFYING PUBLIC DISCLOSURE REQUIREMENTS; AMENDING SECTIONS
 9 3-1-1105, 3-1-1106, 3-1-1109, AND 3-1-1111, MCA; REPEALING
 10 SECTION 3-1-1121, MCA; AND PROVIDING AN EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 3-1-1105, MCA, is amended to read:

14 "3-1-1105. Confidential proceedings -- rules for
 15 commission. (1) Except as provided in 3-1-1107 and ~~3-1-1121~~
 16 3-1-1122 through 3-1-1126, all papers filed with and
 17 proceedings before the commission or masters are
 18 confidential and the filing of papers with and the testimony
 19 given before the commission or masters is privileged
 20 communication.

21 (2) The commission shall make rules for the conduct of
 22 its affairs and the enforcement of confidentiality
 23 consistent with this part."

24 **Section 2.** Section 3-1-1106, MCA, is amended to read:

25 "3-1-1106. Investigation of judicial officers --

1 complaint -- hearing -- recommendations. (1) (a) The
 2 commission, upon the filing of a written complaint by any
 3 citizen of the state, may initiate an investigation of any
 4 judicial officer in the state to determine if there are
 5 grounds for conducting additional proceedings before the
 6 commission. If the commission's investigation indicates that
 7 additional proceedings before the commission may be
 8 justified, the commission shall require the citizen who
 9 filed the original written complaint to sign a verified
 10 written complaint before conducting such additional
 11 proceedings.

12 (b) The commission shall give the judicial officer
 13 written notice of the citizen's complaint and of the
 14 initiation of an investigation. Notice must also be given if
 15 a verified written complaint is filed and must include the
 16 charges made, the grounds for the charges, and a statement
 17 that the judicial officer may file an answer. The notice
 18 must be signed by the commission.

19 (2) The commission, after such investigation as it
 20 considers necessary and upon a finding of good cause, may:

21 (a) order a hearing to be held before it concerning the
 22 censure, suspension, removal, or retirement of a judicial
 23 officer;

24 (b) confidentially advise the judicial officer and the
 25 supreme court, in writing, that the complaint will be



1 dismissed if the judicial officer files with the commission
2 a letter stating that he will take corrective action
3 satisfactory to the commission; or

4 (c) request the supreme court to appoint one or more
5 special masters who are judges of courts of record to hear
6 and take evidence and to report to the commission.

7 (3) If after hearing or after considering the record
8 and report of the masters the commission finds the charges
9 true, it shall recommend to the supreme court the censure,
10 suspension, removal, or disability retirement of the
11 judicial officer."

12 **Section 3.** Section 3-1-1109, MCA, is amended to read:

13 "3-1-1109. Interim disqualification of judicial
14 officer. (1) A judicial officer ~~is~~ must be disqualified from
15 acting serving as such a judicial officer, without loss of
16 salary, while there is pending:

17 (1) an indictment or an information charging him with a
18 crime punishable as a felony under Montana or federal law;
19 or

20 (2) ~~a formal proceeding before the commission for his~~
21 ~~removal or retirement~~ When the commission files with the
22 supreme court a recommendation that a judicial officer be
23 removed or retired, the judicial officer must be
24 disqualified from serving as a judicial officer, without
25 loss of salary, pending the supreme court's review of the

1 record and proceedings."

2 **Section 4.** Section 3-1-1111, MCA, is amended to read:

3 "3-1-1111. Orders for retirement or removal --
4 retirement benefits. (1) Upon an order for retirement, the
5 judicial officer shall be retired with the same rights and
6 privileges as if he retired pursuant to statute.

7 (2) Upon an order for removal, the judicial officer
8 shall be removed from office and his salary shall cease from
9 the date of the order. He shall be ineligible for any other
10 judicial office and pending further order of the court is
11 suspended from practicing law. Upon removal, the judicial
12 officer has the same retirement rights and privileges as if
13 he retired pursuant to statute."

14 NEW SECTION. **Section 5.** Repealer. Section 3-1-1121,
15 MCA, is repealed.

16 NEW SECTION. **Section 6.** Effective date. [This act] is
17 effective July 1, 1991.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 173

INTRODUCED BY PAVLOVICH, DAILY, TOOLE, MENAHAN, DRISCOLL,
LYNCH, STIMATZ, QUILICI, JACOBSON, D. BROWN, HARRINGTON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CERTAIN
PROCEDURES OF THE JUDICIAL STANDARDS COMMISSION; CLARIFYING
THAT UPON AN ORDER OF REMOVAL, A JUDICIAL OFFICER'S
RETIREMENT BENEFITS REMAIN THE SAME AS IF HE RETIRED;
MODIFYING PUBLIC DISCLOSURE REQUIREMENTS; AMENDING SECTIONS
3-1-1105, 3-1-1106, 3-1-1109, AND 3-1-1111 3-1-1122, MCA;
REPEALING SECTION 3-1-1121, MCA, AND PROVIDING AN EFFECTIVE
DATE."

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

Section 1. Section 3-1-1105, MCA, is amended to read:

"3-1-1105. Confidential proceedings ----- rules -- for
commission. (1) Except as provided in 3-1-1107 and 3-1-1121
3-1-1122 through 3-1-1126, all papers filed with and
proceedings before the commission or masters are
confidential and the filing of papers with and the testimony
given before the commission or masters is privileged
communication.

(2) The commission shall make rules for the conduct of
its affairs and the enforcement of confidentiality
consistent with this part."

Section 1. Section 3-1-1106, MCA, is amended to read:

"3-1-1106. Investigation of judicial officers --
complaint -- hearing -- recommendations. (1) (a) The
commission, upon the filing of a written complaint by any
citizen of the state, may initiate an investigation of any
judicial officer in the state to determine if there are
grounds for conducting additional proceedings before the
commission. If the commission's investigation indicates that
additional proceedings before the commission may be
justified, the commission shall require the citizen who
filed the original written complaint to sign a verified
written complaint before conducting such additional
proceedings.

(b) The commission shall give the judicial officer
written notice of the citizen's complaint and of the
initiation of an investigation. Notice must also be given if
a verified written complaint is filed and must include the
charges made, the grounds for the charges, and a statement
that the judicial officer may file an answer. The notice
must be signed by the commission.

(2) The commission, after such investigation as it
considers necessary and upon a finding of good cause, may:

(a) order a hearing to be held before it concerning the
censure, suspension, removal, or retirement of a judicial
officer;

SECOND READING



1 (b) confidentially advise the judicial officer and the
2 supreme court, in writing, that the complaint will be
3 dismissed if the judicial officer files with the commission
4 a letter stating that he will take corrective action
5 satisfactory to the commission; or

6 (c) request the supreme court to appoint one or more
7 special masters who are judges of courts of record to hear
8 and take evidence and to report to the commission.

9 (3) If after hearing or after considering the record
10 and report of the masters the commission finds the charges
11 true, it shall recommend to the supreme court the censure,
12 suspension, removal, or disability retirement of the
13 judicial officer."

14 **Section 2.** Section 3-1-1109, MCA, is amended to read:

15 "3-1-1109. Interim disqualification of judicial
16 officer. (1) A judicial officer is must be disqualified from
17 acting serving as such a judicial officer, without loss of
18 salary, while there is pending-

19 (1) an indictment or an information charging him with a
20 crime punishable as a felony under Montana or federal law;
21 or

22 (2) a formal proceeding before the commission for his
23 removal or retirement When the commission files with the
24 supreme court a recommendation that a judicial officer be
25 removed or retired, the judicial officer must be

1 disqualified from serving as a judicial officer, without
2 loss of salary, pending the supreme court's review of the
3 record and proceedings."

4 ~~Section 4--Section 3-1-1111--MCA, is amended to read:~~

5 ~~"3-1-1111--Orders--for--retirement--or--removal --~~
6 ~~retirement-benefits--(1)--Upon-an-order-for--retirement,--the~~
7 ~~judicial--officer--shall-be-retired-with-the-same-rights-and~~
8 ~~privileges-as-if-he-retired-pursuant-to-statute;~~

9 ~~(2)--Upon-an-order-for--removal,--the--judicial--officer~~
10 ~~shall-be-removed-from-office-and-his-salary-shall-cease-from~~
11 ~~the--date-of-the-order;--He-shall-be-ineligible-for-any-other~~
12 ~~judicial-office-and-pending-further-order-of--the--court--is~~
13 ~~suspended--from--practicing--law;--Upon-removal,--the-judicial~~
14 ~~officer-has-the-same-retirement-rights-and-privileges-as--if~~
15 ~~he-retired-pursuant-to-statute;"~~

16 ~~NEW-SECTION--Section-5--Repealer--Section--3-1-1121,~~
17 ~~MCA, is repealed;~~

18 **SECTION 3.** SECTION 3-1-1122, MCA, IS AMENDED TO READ:

19 "3-1-1122. Judge's waiver of confidentiality -- hearing
20 made public. ~~The~~ In addition to the public disclosure
21 required under 3-1-1107, 3-1-1121, and 3-1-1123 through
22 3-1-1126, the commission must allow public access to all
23 papers filed with and testimony and hearings before the
24 commission or masters in a given case if the judge against
25 whom a complaint has been filed waives his right of

1 confidentiality and requests in writing that the proceedings
2 be accessible to the public. Public disclosure of
3 information required under 3-1-1107, 3-1-1121, and 3-1-1123
4 through 3-1-1126 is not contingent upon a waiver under this
5 section."

6 NEW SECTION. **Section 4.** Effective date. [This act] is
7 effective July 1, 1991.

-End-

HOUSE BILL NO. 173

INTRODUCED BY PAVLOVICH, DAILY, TOOLE, MENAHAN, DRISCOLL,
LYNCH, STIMATZ, QUILICI, JACOBSON, D. BROWN, HARRINGTON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CERTAIN
PROCEDURES OF THE JUDICIAL STANDARDS COMMISSION; CLARIFYING
THAT UPON AN ORDER OF REMOVAL, A JUDICIAL OFFICER'S
RETIREMENT BENEFITS REMAIN THE SAME AS IF HE RETIRED;
MODIFYING PUBLIC DISCLOSURE REQUIREMENTS; AMENDING SECTIONS
3-1-1105, 3-1-1106, 3-1-1109, AND 3-1-1111 3-1-1122, MCA;
REPEALING SECTION 3-1-1121, MCA; AND PROVIDING AN EFFECTIVE
DATE."

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

Section 1. Section 3-1-1105, MCA, is amended to read:

"3-1-1105. Confidential proceedings ----- rules for
commission: (1) Except as provided in 3-1-1107 and 3-1-1121
3-1-1122 through 3-1-1126, all papers filed with and
proceedings before the commission or masters are
confidential and the filing of papers with and the testimony
given before the commission or masters is privileged
communication.

(2) The commission shall make rules for the conduct of
its affairs and the enforcement of confidentiality
consistent with this part."

Section 1. Section 3-1-1106, MCA, is amended to read:

"3-1-1106. Investigation of judicial officers --
complaint -- hearing -- recommendations. (1) (a) The
commission, upon the filing of a written complaint by any
citizen of the state, may initiate an investigation of any
judicial officer in the state to determine if there are
grounds for conducting additional proceedings before the
commission. If the commission's investigation indicates that
additional proceedings before the commission may be
justified, the commission shall require the citizen who
filed the original written complaint to sign a verified
written complaint before conducting such additional
proceedings.

(b) The commission shall give the judicial officer
written notice of the citizen's complaint and of the
initiation of an investigation. Notice must also be given if
a verified written complaint is filed and must include the
charges made, the grounds for the charges, and a statement
that the judicial officer may file an answer. The notice
must be signed by the commission.

(2) The commission, after such investigation as it
considers necessary and upon a finding of good cause, may:

(a) order a hearing to be held before it concerning the
censure, suspension, removal, or retirement of a judicial
officer;

THIRD READING



1 (b) confidentially advise the judicial officer and the
2 supreme court, in writing, that the complaint will be
3 dismissed if the judicial officer files with the commission
4 a letter stating that he will take corrective action
5 satisfactory to the commission; or

6 (c) request the supreme court to appoint one or more
7 special masters who are judges of courts of record to hear
8 and take evidence and to report to the commission.

9 (3) If after hearing or after considering the record
10 and report of the masters the commission finds the charges
11 true, it shall recommend to the supreme court the censure,
12 suspension, removal, or disability retirement of the
13 judicial officer."

14 **Section 2.** Section 3-1-1109, MCA, is amended to read:

15 "3-1-1109. Interim disqualification of judicial
16 officer. (1) A judicial officer ~~is~~ must be disqualified from
17 acting serving as such a judicial officer, without loss of
18 salary, while there is pending:

19 (1) an indictment or an information charging him with a
20 crime punishable as a felony under Montana or federal law;
21 or

22 (2) ~~a formal proceeding before the commission for his~~
23 ~~removal or retirement~~ When the commission files with the
24 supreme court a recommendation that a judicial officer be
25 removed or retired, the judicial officer must be

1 disqualified from serving as a judicial officer, without
2 loss of salary, pending the supreme court's review of the
3 record and proceedings."

4 ~~Section 4. Section 3-1-1111, MCA, is amended to read:~~

5 ~~"3-1-1111. Orders for retirement or removal --~~
6 ~~retirement benefits: (1) Upon an order for retirement, the~~
7 ~~judicial officer shall be retired with the same rights and~~
8 ~~privileges as if he retired pursuant to statute:~~

9 ~~(2) Upon an order for removal, the judicial officer~~
10 ~~shall be removed from office and his salary shall cease from~~
11 ~~the date of the order. He shall be ineligible for any other~~
12 ~~judicial office and pending further order of the court is~~
13 ~~suspended from practicing law. Upon removal, the judicial~~
14 ~~officer has the same retirement rights and privileges as if~~
15 ~~he retired pursuant to statute."~~

16 ~~NEW SECTION. Section 5. Repealer. Section 3-1-1121,~~
17 ~~MCA, is repealed:~~

18 **SECTION 3. SECTION 3-1-1122, MCA, IS AMENDED TO READ:**

19 "3-1-1122. Judge's waiver of confidentiality -- hearing
20 made public. ~~The~~ In addition to the public disclosure
21 required under 3-1-1107, 3-1-1121, and 3-1-1123 through
22 3-1-1126, the commission must allow public access to all
23 papers filed with and testimony and hearings before the
24 commission or masters in a given case if the judge against
25 whom a complaint has been filed waives his right of

1 confidentiality and requests in writing that the proceedings
2 be accessible to the public. Public disclosure of
3 information required under 3-1-1107, 3-1-1121, and 3-1-1123
4 through 3-1-1126 is not contingent upon a waiver under this
5 section."

6 NEW SECTION. Section 4. Effective date. [This act] is
7 effective July 1, 1991.

-End-

HOUSE BILL NO. 173

INTRODUCED BY PAVLOVICH, DAILY, TOOLE, MENAHAN, DRISCOLL,
LYNCH, STIMATZ, QUILICI, JACOBSON, D. BROWN, HARRINGTON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CERTAIN
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THAT UPON AN ORDER OF REMOVAL, A JUDICIAL OFFICER'S
RETIREMENT BENEFITS REMAIN THE SAME AS IF HE RETIRED;
MODIFYING PUBLIC DISCLOSURE REQUIREMENTS; AMENDING SECTIONS
3-1-1105, 3-1-1106, 3-1-1109, AND 3-1-1121 3-1-1122, MCA;
REPEALING SECTION 3-1-1121, MCA, AND PROVIDING AN EFFECTIVE
DATE."

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

Section 1. Section 3-1-1105, MCA, is amended to read:

3-1-1105. Confidential proceedings ----- rules for
commission. (1) Except as provided in 3-1-1107 and 3-1-1121
3-1-1122 through 3-1-1126, all papers filed with and
proceedings before the commission or masters are
confidential and the filing of papers with and the testimony
given before the commission or masters is privileged
communication.

(2) The commission shall make rules for the conduct of
its affairs and the enforcement of confidentiality
consistent with this part."

Section 1. Section 3-1-1106, MCA, is amended to read:

3-1-1106. Investigation of judicial officers --
complaint -- hearing -- recommendations. (1) (a) The
commission, upon the filing of a written complaint by any
citizen of the state, may initiate an investigation of any
judicial officer in the state to determine if there are
grounds for conducting additional proceedings before the
commission. If the commission's investigation indicates that
additional proceedings before the commission may be
justified, the commission shall require the citizen who
filed the original written complaint to sign a verified
written complaint before conducting such additional
proceedings.

(b) The commission shall give the judicial officer
written notice of the citizen's complaint and of the
initiation of an investigation. Notice must also be given if
a verified written complaint is filed and must include the
charges made, the grounds for the charges, and a statement
that the judicial officer may file an answer. The notice
must be signed by the commission.

(2) The commission, after such investigation as it
considers necessary and upon a finding of good cause, may:

(a) order a hearing to be held before it concerning the
censure, suspension, removal, or retirement of a judicial
officer;

REFERENCE BILL



1 (b) confidentially advise the judicial officer and the
2 supreme court, in writing, that the complaint will be
3 dismissed if the judicial officer files with the commission
4 a letter stating that he will take corrective action
5 satisfactory to the commission; or

6 (c) request the supreme court to appoint one or more
7 special masters who are judges of courts of record to hear
8 and take evidence and to report to the commission.

9 (3) If after hearing or after considering the record
10 and report of the masters the commission finds the charges
11 true, it shall recommend to the supreme court the censure,
12 suspension, removal, or disability retirement of the
13 judicial officer."

14 **Section 2.** Section 3-1-1109, MCA, is amended to read:

15 "3-1-1109. Interim disqualification of judicial
16 officer. (1) A judicial officer is must be disqualified from
17 acting serving as such a judicial officer, without loss of
18 salary, while there is pending:

19 (i) an indictment or an information charging him with a
20 crime punishable as a felony under Montana or federal law;
21 or,

22 (2) ~~a--format--proceeding-before-the-commission-for-his~~
23 ~~removal-or-retirement~~ When the commission files with the
24 supreme court a recommendation that a judicial officer be
25 removed or retired, the judicial officer must be

1 disqualified from serving as a judicial officer, without
2 loss of salary, pending the supreme court's review of the
3 record and proceedings."

4 ~~Section 4.--Section 3-1-1111, MCA, is amended to read:~~

5 ~~"3-1-1111.--Orders---for---retirement---or---removal --~~
6 ~~retirement-benefits,--(1)--Upon-an-order-for--retirement,--the~~
7 ~~judicial--officer--shall-be-retired-with-the-same-rights-and~~
8 ~~privileges-as-if-he-retired-pursuant-to-statute.~~

9 ~~(2)--Upon-an-order-for--removal,--the--judicial--officer~~
10 ~~shall-be-removed-from-office-and-his-salary-shall-cess-from~~
11 ~~the--date-of-the-order.--He-shall-be-ineligible-for-any-other~~
12 ~~judicial-office-and-pending-further-order-of--the--court--is~~
13 ~~suspended--from--practicing--law.--Upon-removal,--the-judicial~~
14 ~~officer-has-the-same-retirement-rights-and-privileges-as--if~~
15 ~~he-retired-pursuant-to-statute."~~

16 ~~NEW-SECTION,--Section 5.--Repealer,--Section--3-1-1127~~
17 ~~MCA,--is-repealed:~~

18 **SECTION 3. SECTION 3-1-1122, MCA, IS AMENDED TO READ:**

19 "3-1-1122. Judge's waiver of confidentiality -- hearing
20 made public. The In addition to the public disclosure
21 required under 3-1-1107, 3-1-1121, and 3-1-1123 through
22 3-1-1126, the commission must allow public access to all
23 papers filed with and testimony and hearings before the
24 commission or masters in a given case if the judge against
25 whom a complaint has been filed waives his right of

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1 confidentiality and requests in writing that the proceedings
2 be accessible to the public. Public disclosure of
3 information required under 3-1-1107, 3-1-1121, and 3-1-1123
4 through 3-1-1126 is not contingent upon a waiver under this
5 section."

6 NEW SECTION. Section 4. Effective date. [This act] is
7 effective July 1, 1991.

-End-