

## 1 HOUSE BILL NO. 587

2 INTRODUCED BY W. MCNUTT

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THE OPTION FOR AN ASSOCIATE WATER JUDGE;  
5 DEFINING THE DUTIES OF AN ASSOCIATE WATER JUDGE; GRANTING THE ASSOCIATE WATER JUDGE  
6 STATEWIDE JURISDICTION; PROVIDING AN APPROPRIATION; ~~AND~~ AMENDING SECTIONS 3-1-1001,  
7 3-1-1010, 3-7-221, 3-7-222, 3-7-223, 3-7-224, AND 19-5-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

8

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

10

11 **Section 1.** Section 3-1-1001, MCA, is amended to read:

12 **"3-1-1001. Creation, composition, and function of commission.** (1) A judicial nomination commission  
13 for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any  
14 vacancy on the supreme court or any district court and to provide the chief justice of the supreme court with a  
15 list of candidates for appointment to fill any term or vacancy for the chief water judge or associate water judge  
16 pursuant to 3-7-221. The commission is composed of seven members as follows:

17 (a) four lay members who are neither judges nor attorneys, active or retired, who reside in different  
18 geographical areas of the state, and each of whom is representative of a different industry, business, or  
19 profession, whether actively engaged or retired, who are appointed by the governor;

20 (b) two attorneys actively engaged in the practice of law, one from that part of the state that is composed  
21 of judicial districts 1 through 5, 9, 11, and 18 through 21 and one from that part of the state that is composed of  
22 judicial districts 6 through 8, 10, 12 through 17, and 22, who are appointed by the supreme court;

23 (c) one district judge elected by the district judges under an elective procedure initiated and conducted  
24 by the supreme court and certified to election by the chief justice of the supreme court. The election is considered  
25 an appointment for the purposes of this part.

26 (2) Appointments provided for in this section must be made within 30 days of the completion of the  
27 preceding terms."

28

29 **Section 2.** Section 3-1-1010, MCA, is amended to read:30 **"3-1-1010. Lists submitted to governor and chief justice -- report on proceedings.** (1) If a supreme

1 court justice, a district court judge, the workers' compensation judge, the associate water judge, or the chief water  
 2 judge gives notice of the judge's resignation to take effect on a specific date, the commission shall meet as soon  
 3 as possible after the justice's or judge's proposed resignation date has been verified by the chief justice of the  
 4 supreme court. If notice is not given, the commission shall meet as soon as possible after a vacancy occurs. The  
 5 meeting must be held in compliance with 3-1-1007. The commission shall submit to the governor or chief justice,  
 6 within the time period established under 3-1-1007, a list of not less than three or more than five nominees for  
 7 appointment to the vacant position.

8 (2) The list must be accompanied by a written report indicating the vote on each nominee, the content  
 9 of the application submitted by each nominee, letters and public comments received regarding each nominee,  
 10 and the commission's reasons for recommending each nominee for appointment. The report must give specific  
 11 reasons for recommending each nominee."  
 12

13 **Section 3.** Section 3-7-221, MCA, is amended to read:

14 "**3-7-221. Appointment of chief water judge -- term of office.** (1) The chief justice of the Montana  
 15 supreme court shall appoint a chief water judge as provided in Title 3, chapter 1, part 10. The chief justice of the  
 16 Montana supreme court may appoint an associate water judge as provided in Title 3, chapter 1, part 10.

17 (2) To be eligible for the office of chief water judge or associate water judge, a person shall have the  
 18 qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana constitution.

19 (3) The term of office of the chief water judge and the associate water judge ~~is from the date of initial~~  
 20 ~~appointment until June 30, 1985. After June 30, 1985, the term of office is 4 years, subject to continuation of the~~  
 21 water divisions by the legislature."  
 22

23 **Section 4.** Section 3-7-222, MCA, is amended to read:

24 "**3-7-222. Salary -- office space.** (1) The chief water judge and the associate water judge ~~is entitled to~~  
 25 must receive the same salary and expense allowance as provided for district judges in 3-5-211.

26 (2) The office of the chief water judge and the associate water judge must be at the location ~~that~~  
 27 designated by the chief justice of the Montana supreme court ~~shall designate~~. The Montana supreme court shall  
 28 provide in its budget for the salary, expenses, and office and staff requirements of the chief water judge and the  
 29 associate water judge, ~~which money.~~ Money may be appropriated by the legislature from the general fund for  
 30 these purposes."

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2           **NEW SECTION. Section 5. Duties of associate water judge.** The duties of the associate water judge  
3 are the same as those assigned to the chief water judge pursuant to 3-7-223(1) and (2).

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5           **SECTION 6. SECTION 3-7-223, MCA, IS AMENDED TO READ:**  
6           **"3-7-223. Duties of the chief water judge.** The chief water judge shall:  
7           (1) administer the adjudication of existing water rights by:  
8           (a) coordinating with the department of natural resources and conservation in compiling information  
9 submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously  
10 and properly compiled and transferred to the water judge in each water division;  
11           (b) assuring that the water judge in each water division moves without unreasonable delay to enter the  
12 required preliminary decree;  
13           (c) assuring that any contested or conflicting claims are tried and adjudicated as expeditiously as  
14 possible;  
15           (2) conduct hearings in cases certified to the district court under 85-2-309;  
16           (3) assign court personnel to divisions and duties as needed;  
17           (4) assign the associate water judge to divisions and cases as needed; and  
18 ~~(4)~~(5) request and secure the transfer of water judges between divisions as needed."

19  
20           **Section 7.** Section 3-7-224, MCA, is amended to read:  
21           **"3-7-224. Jurisdiction of chief water judge and associate water judge.** (1) The chief water judge and  
22 the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as  
23 water judge for one of the water divisions.

24           (2) The chief water judge ~~has~~ and the associate water judge have jurisdiction over cases certified to the  
25 district court under 85-2-309 and all matters relating to the determination of existing water rights within the  
26 boundaries of the state of Montana.

27           (3) ~~With regard to the consideration of a matter within the chief water judge's jurisdiction, the~~ The WITH  
28 REGARD TO THE CONSIDERATION OF A MATTER WITHIN THE CHIEF WATER JUDGE'S JURISDICTION, THE chief water judge  
29 ~~has~~ and the associate water judge have the same powers as a district court judge. The chief water judge and the  
30 associate water judge may issue orders, on the motion of an interested party or on the judge's own motion, that

1 may reasonably be required to allow the judge to fulfill the judge's responsibilities, including, but not limited to,  
 2 requiring the joinder of persons not parties to the administrative hearing being conducted by the department  
 3 pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant  
 4 to 85-2-309(2)."

5

6 **Section 8.** Section 19-5-301, MCA, is amended to read:

7 **"19-5-301. Membership -- inactive vested members -- inactive nonvested members.** (1) Except for  
 8 a judge or justice who elected in writing to remain under the public employees' retirement system on or before  
 9 October 1, 1985, a judge of a district court, a justice of the supreme court, and the chief water judge or associate  
 10 water judge provided for in 3-7-221 must be members of the Montana judges' retirement system.

11 (2) A judge pro tempore is not eligible for active membership in the retirement system.

12 (3) A member with at least 5 years of membership service who terminates service and does not take a  
 13 refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase  
 14 service credit and to receive a retirement benefit under the provisions of this chapter.

15 (4) A member with less than 5 years of membership service who terminates service and leaves the  
 16 member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible  
 17 for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the  
 18 member's accumulated contributions."

19

20 NEW SECTION. **Section 9. Appropriation.** There is appropriated ~~\$100,000~~ \$22,000 for each of the  
 21 fiscal years 2012 and 2013 from the water adjudication account provided for in 85-2-280 to the Montana supreme  
 22 court for ~~the salary, expenses, and~~ OF THE office ~~and staff requirements~~ of the associate AND CHIEF water judge.

23

24 NEW SECTION. **Section 10. Codification instruction.** [Section 5] is intended to be codified as an  
 25 integral part of Title 3, chapter 7, part 2, and the provisions of Title 3, chapter 7, part 2, apply to [section 5].

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27 NEW SECTION. SECTION 11. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2011.

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- END -