

## 1 SENATE BILL NO. 443

2 INTRODUCED BY M. HALLIGAN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN INTERMEDIATE APPELLATE COURT; CREATING  
5 THE COURT OF APPEALS; PROVIDING FOR DIRECT APPEAL TO THE SUPREME COURT IN CASES  
6 INVOLVING THE DEATH PENALTY OR LIFE IMPRISONMENT AND CASES INVOLVING THE  
7 CONSTITUTIONALITY OF A STATUTE; ALLOWING CERTAIN CASES TO BE DIRECTLY FILED WITH THE  
8 SUPREME COURT AFTER PETITION; PROVIDING FOR STAGGERED TERMS OF COURT OF APPEAL  
9 JUDGES; AMENDING SECTIONS 3-1-101, 3-1-102, 19-5-103, 19-5-301, 39-71-2904, AND 46-20-706, MCA;  
10 AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

11

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

13

14 **NEW SECTION. Section 1. Court of appeals -- terms of office -- panels -- judges -- salary.** (1)

15 There is a court of appeals that consists of five judges. The judges are elected as provided in [section 2] at the  
16 general election preceding the expiration of the terms of office of their predecessors, respectively, and hold their  
17 offices for the term of 8 years from and after the first Monday of January succeeding their election.

18 (2) The court shall sit in panels of three judges to conduct the business of the court. The decision of a  
19 majority of the judges of the panel to which a case is submitted constitutes the decision of the court for that case.  
20 The membership of the panels must be assigned and regularly rotated by the chief judge of the court of appeals  
21 in a manner that provides each judge the opportunity to serve a proportionate amount of time with every other  
22 judge on the court.

23 (3) The judges of the court of appeals shall each year select one of their members as chief judge.

24 (4) The judges of the court of appeals must be paid an amount equal to 95% of the salary set for a justice  
25 of the supreme court.

26 (5) The judges of the court of appeals are subject to the same provisions relating to selection, filling of  
27 a vacancy, term of office, discipline, removal from office, and retirement as are all other judges covered by Article  
28 VII of the Montana constitution.

29 (6) The number of retired judges called for duty by the supreme court or the chief justice to aid and assist  
30 the court of appeals pursuant to 19-5-103 may not at any time exceed two, and a panel of the court of appeals

1 may not contain a majority of retired judges.

2 (7) [Sections 1 through 8] do not create a right of appeal if that right is not otherwise provided or created  
3 by law.

4

5 **NEW SECTION. Section 2. Court of appeals -- districts.** (1) In this state, there are five court of  
6 appeals districts, with one judge elected from each district, distributed as follows:

7 (a) first district: Blaine, Chouteau, Daniels, Dawson, Fergus, Garfield, Glacier, Golden Valley, Hill,  
8 Liberty, McCone, Musselshell, Petroleum, Phillips, Pondera, Prairie, Richland, Roosevelt, Sheridan, Toole, Valley,  
9 and Wibaux Counties;

10 (b) second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Rosebud, Stillwater, Sweet  
11 Grass, Treasure, and Yellowstone Counties;

12 (c) third district: Broadwater, Cascade, Jefferson, Judith Basin, Lewis and Clark, Meagher, Teton, and  
13 Wheatland Counties;

14 (d) fourth district: Beaverhead, Deer Lodge, Gallatin, Granite, Madison, Park, Powell, Ravalli, and Silver  
15 Bow Counties;

16 (e) fifth district: Flathead, Lake, Lincoln, Mineral, Missoula, and Sanders Counties.

17 (2) For purposes of this section, a judge's residence on the effective date of appointment or election is  
18 considered the judge's residence while the judge serves on the court of appeals.

19

20 **NEW SECTION. Section 3. Qualification and residence.** (1) To be eligible for the office of judge of  
21 the court of appeals, a person must be a citizen of the United States, have resided in the state 2 years  
22 immediately before taking office, and have been admitted to practice law in Montana for at least 5 years prior to  
23 the date of appointment or election.

24 (2) Judges of the court of appeals shall reside within the state during their terms of office.

25

26 **NEW SECTION. Section 4. Decisions -- form -- when published.** (1) Decisions of the court of  
27 appeals must be in the form of an order accompanied by a memorandum opinion. The memorandum opinion  
28 may not be published unless publication is ordered by the court of appeals. All memorandum opinions must be  
29 filed with the clerk of the supreme court, are public records, and must be made available to the public in a manner  
30 determined by the court of appeals.

1 (2) In determining whether to publish a memorandum opinion, the court of appeals may take into  
2 consideration one or more of the following factors, whether the decision:

3 (a) enunciates a new rule of law;

4 (b) applies an established rule of law to a factual situation significantly different from that in published  
5 opinions;

6 (c) resolves or identifies a conflict between prior court of appeals decisions;

7 (d) will contribute to legal literature by collecting case law or reciting legislative history; and

8 (e) involves a case of substantial and continuing public interest.

9

10 **NEW SECTION. Section 5. Jurisdiction -- direct review by supreme court -- removal of case.** (1)

11 If taken, appeals in civil and criminal cases from Montana district courts and appeals from the workers'  
12 compensation court must be to the court of appeals except in capital cases, cases in which life imprisonment has  
13 been imposed, and cases involving the constitutionality of a statute.

14 (2) Any party to a case appealed to the court of appeals may file a petition in the supreme court for direct  
15 review by the supreme court and to bypass the review by the court of appeals. The procedure and time for filing  
16 the petition must be as provided by rules of the supreme court. In deciding whether to grant the petition, the  
17 supreme court may consider one or more of the following factors, whether the case:

18 (a) involves a question of first impression or presents a novel legal question;

19 (b) involves a question of state or federal constitutional interpretation;

20 (c) raises a question of law regarding the validity of a statute;

21 (d) involves issues upon which there is an inconsistency in the decisions of the court of appeals or of  
22 the supreme court; and

23 (e) is one of significant public interest.

24 (3) When a petition for direct review is granted, the case must be docketed for hearing before the  
25 supreme court.

26 (4) The supreme court shall by rule provide for the removal of a case from the court of appeals to the  
27 supreme court for decision by the supreme court at any time before a final decision has been made on the case  
28 by the court of appeals. The removal may be on the recommendation of the court of appeals or on motion of the  
29 supreme court. Cases may be removed from the court of appeals for decision by the supreme court for any one  
30 or more of the reasons set forth in subsection (2) or in order to regulate the caseload existing in either the court

1 of appeals or the supreme court. The chief judge of the court of appeals and the chief justice of the supreme  
 2 court shall regularly inform each other of the number and nature of cases docketed in the respective court.

3

4 NEW SECTION. Section 6. Decision -- review by supreme court. Within 30 days after the court of  
 5 appeals has issued its decision in a case, any party to the case may petition the supreme court for further review  
 6 of the decision in the manner prescribed by the rules of the supreme court.

7

8 NEW SECTION. Section 7. Administrative office -- arguments heard throughout state -- judges'  
 9 **offices.** The court of appeals must have its principal administrative office in Helena, Montana. The court of  
 10 appeals may hear arguments at sites throughout the state by designation of the chief judge of the court of  
 11 appeals. The chief judge shall give primary consideration to the convenience of the litigants and counsel when  
 12 designating sites to hear arguments. The administrator of the supreme court shall make arrangements for office  
 13 space and courtrooms to be used by the court of appeals.

14

15 NEW SECTION. Section 8. Clerk -- administrator -- duties -- expenses of court -- rules. The clerk  
 16 of the supreme court shall serve as the clerk of the court of appeals. The administrator of the supreme court shall  
 17 provide facilities, supplies, equipment, and support staff needed by the court of appeals. All expenses of the court  
 18 of appeals must be included in the budget of the supreme court. The supreme court shall adopt rules to  
 19 implement [sections 1 through 8].

20

21 **Section 9.** Section 3-1-101, MCA, is amended to read:

22 **"3-1-101. The several courts of this state.** The following are courts of justice of this state:

23 (1) the court of impeachment, which is the senate;

24 (2) the supreme court;

25 (3) the court of appeals;

26 ~~(3)~~(4) the district courts;

27 ~~(4)~~(5) the municipal courts;

28 ~~(5)~~(6) the justices' courts;

29 ~~(6)~~(7) the city courts and ~~such~~ other courts of limited jurisdiction ~~as that~~ the legislature may establish in  
 30 any incorporated city or town."

1

2           **Section 10.** Section 3-1-102, MCA, is amended to read:

3           **"3-1-102. Courts of record.** The court of impeachment, the supreme court, the court of appeals, the  
4 district courts, and the municipal courts are courts of record."

5

6           **Section 11.** Section 19-5-103, MCA, is amended to read:

7           **"19-5-103. Call of retired judge for duty.** (1) ~~Every~~ A judge or justice who has voluntarily retired after  
8 8 years of service must, if physically and mentally able, be subject to call for duty by the supreme court or the  
9 chief justice to aid and assist the supreme court, the court of appeals, any district court, or any water court under  
10 directions as the supreme court may give, including the examination of the facts, cases, and authorities cited and  
11 the preparation of opinions for and on behalf of the supreme court, the court of appeals, district court, or water  
12 court, or to serve as water judge. The opinions, when and if and to the extent approved by the court, may ~~by the~~  
13 ~~court~~ be ordered by the court to constitute the opinion of the court. The court and the retired judge or justice may,  
14 subject to any rule that the supreme court may adopt, perform any duties preliminary to the final disposition of  
15 cases that are not inconsistent with the constitution of the state.

16           (2) A retired judge or justice, when called to duty, must be reimbursed for actual expenses, if any, in  
17 responding to the call. In addition, for each day of duty, a retired justice or judge is entitled to receive  
18 compensation in an amount equal to one-twentieth of the monthly salary then currently applicable to the judicial  
19 position in which the duty is rendered minus an amount equal to one-twentieth of the monthly retirement benefit  
20 that the retired justice or judge is receiving, if any, for each day of duty rendered."

21

22           **Section 12.** Section 19-5-301, MCA, is amended to read:

23           **"19-5-301. Membership -- inactive vested members -- inactive nonvested members.** (1) Except for  
24 a judge or justice who elected in writing to remain under the public employees' retirement system on or before  
25 October 1, 1985, a judge of a district court, a justice of the supreme court, a judge of the court of appeals, and  
26 the chief water judge provided for in 3-7-221 must be members of the Montana judges' retirement system.

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

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

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

5

6 **SECTION 13.** SECTION 39-71-2904, MCA, IS AMENDED TO READ:

7 **"39-71-2904. Direct appeal to appellate court or supreme court.** Notwithstanding 2-4-701 through  
8 2-4-704, an appeal from a final decision of the workers' compensation judge ~~shall~~ must be filed ~~directly~~ with the  
9 appellate court or the supreme court of Montana in the manner provided by law for appeals from the district court  
10 in civil cases."

11

12 **Section 14.** Section 46-20-706, MCA, is amended to read:

13 **"46-20-706. Termination of appeal -- remand.** (1) Upon termination of the appeal, the ~~supreme~~  
14 appellate court shall remand the cause with proper instruction together with the opinion of the court. The clerk  
15 shall return all original documents to the trial court.

16 (2) After the cause has been remanded to the trial court, the appellate court has no further jurisdiction  
17 of the appeal or the proceedings thereon and all orders necessary to carry the judgment into effect must be made  
18 by the court to which the cause is remanded."

19

20 NEW SECTION. **Section 15. Codification instruction.** [Sections 1 through 8] are intended to be  
21 codified as an integral part of Title 3, and the provisions of Title 3 apply to [sections 1 through 8].

22

23 NEW SECTION. **Section 16. Saving clause.** [This act] does not affect rights and duties that matured,  
24 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

25

26 NEW SECTION. **Section 17. Effective dates.** (1) Except as provided in subsection (2), [this act] is  
27 effective January 1, 2000.

28 (2) [Section ~~48~~ 19 and this section] are effective on passage and approval.

29

30 NEW SECTION. **Section 18. Retroactive applicability -- pending cases.** [This act] applies

1 retroactively, within the meaning of 1-2-109, to any case on appeal before the supreme court on January 3, 2000,  
2 except cases in which a sentence of death or life imprisonment has been imposed and cases involving the  
3 constitutionality of a statute. The supreme court may assign pending cases to the court of appeals, except cases  
4 in which a sentence of death or life imprisonment has been imposed and cases involving the constitutionality of  
5 a statute.

6

7 **NEW SECTION. Section 19. Transition -- staggered terms.** (1) In July 1999, or as soon thereafter  
8 as possible, and pursuant to the provisions of Title 3, chapter 1, part 10, the governor shall appoint to the court  
9 of appeals:

10 (a) two judges to terms that begin in January 2000 and expire in January 2003;

11 (b) two judges to terms that begin in January 2000 and expire in January 2005; and

12 (c) one judge to a term that begins in January 2000 and expires in January 2007.

13 (2) Appointments made under subsection (1) of this section are subject to the provisions of  
14 3-1-1013(2)(b), and the positions are subject to election at the 2000 primary and general elections for the  
15 remainder of the respective terms.

16 (3) After expiration of the original terms established by this section, the succeeding terms must be 8-year  
17 terms.

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- END -

