

SENATE BILL NO. 28

INTRODUCED BY C. VINCENT

BY REQUEST OF THE WATER POLICY INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WATER LAWS REGARDING JUDICIAL REVIEW OF WATER RIGHTS; AUTHORIZING THE WATER COURT TO REVIEW CERTAIN DECISIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION RELATING TO APPLICATIONS FOR WATER RIGHT PERMITS AND CHANGES TO WATER RIGHT PERMITS; EXPANDING JURISDICTION OF THE WATER COURT; CLARIFYING DUTIES OF THE CHIEF WATER JUDGE AND ASSOCIATE WATER JUDGE; AMENDING SECTIONS 2-4-702, 3-7-223, 3-7-224, AND 3-7-225, MCA; AND PROVIDING AN APPLICABILITY DATE AND A TERMINATION DATE."

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

**Section 1.** Section 2-4-702, MCA, is amended to read:

**"2-4-702. Initiating judicial review of contested cases.** (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and ~~subsection (2)(c)~~ subsections (2)(c) and (2)(e) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency

1 and all parties of record.

2 (b) The petition must include a concise statement of the facts upon which jurisdiction and venue are  
3 based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in  
4 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which  
5 the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

6 (c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather  
7 than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in  
8 the same manner as the provisions of this part apply to the district court.

9 (d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title  
10 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be  
11 located or where the action is proposed to occur.

12 (e) A party who is aggrieved by a final decision on an application for a permit or change in appropriation  
13 right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for judicial review of  
14 the decision. If a petition for judicial review is filed in the water court, the water court rather than the district court  
15 has jurisdiction and the provisions of this part apply to the water court in the same manner as they apply to the  
16 district court. The time for filing a petition is the same as provided in subsection (2)(a).

17 (3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the  
18 agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers  
19 proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice  
20 only if the provisions of 27-19-315 through 27-19-317 are met.

21 (4) Within 30 days after the service of the petition or within further time allowed by the court, the agency  
22 shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under  
23 review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably  
24 refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may  
25 require or permit subsequent corrections or additions to the record."

26

27 **Section 2.** Section 3-7-223, MCA, is amended to read:

28 **"3-7-223. Duties of chief water judge.** The chief water judge shall:

29 (1) administer the adjudication of existing water rights by:

30 (a) coordinating with the department of natural resources and conservation in compiling information

1 submitted on water claim forms under Title 85, chapter 2, part 2, to ~~assure~~ ensure that the information is  
2 expeditiously and properly compiled and transferred to the water judge in each water division;

3 (b) ~~assuring~~ ensuring that the water judge in each water division moves without unreasonable delay to  
4 enter the required preliminary decree; and

5 (c) ~~assuring~~ ensuring that any contested or conflicting claims are tried and adjudicated as expeditiously  
6 as possible;

7 (2) conduct hearings in cases certified to the district court under 85-2-309;

8 (3) conduct proceedings for petitions for judicial review filed with the water court under 2-4-702;

9 ~~(3)(4)~~ assign court personnel to divisions and duties as needed;

10 ~~(4)(5)~~ assign the associate water judge to divisions and cases as needed; and

11 ~~(5)(6)~~ request and secure the transfer of water judges between divisions as needed."

12

13 **Section 3.** Section 3-7-224, MCA, is amended to read:

14 **"3-7-224. Jurisdiction of chief water judge and associate water judge.** (1) The chief water judge and  
15 the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as  
16 water judge for one of the water divisions.

17 (2) The chief water judge and the associate water judge have jurisdiction over cases certified to the  
18 district court under 85-2-309, ~~and~~ all matters relating to the determination of existing water rights within the  
19 boundaries of the state of Montana, and all petitions for judicial review filed with the water court under 2-4-702.

20 (3) With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief water  
21 judge and the associate water judge have the same powers as a district court judge. The chief water judge and  
22 the associate water judge may issue orders, on the motion of an interested party or on the judge's own motion,  
23 that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited  
24 to requiring the joinder of persons not parties to the administrative hearing being conducted by the department  
25 pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant  
26 to 85-2-309(2)."

27

28 **Section 4.** Section 3-7-225, MCA, is amended to read:

29 **"3-7-225. Duties of associate water judge.** The duties of the associate water judge are the same as  
30 those assigned to the chief water judge pursuant to 3-7-223(1) ~~and (2)~~ through (3)."

