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SENATE BILL NO. 140

INTRODUCED BY K. REGIER, J. ELLSWORTH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CERTAIN JUDICIAL APPOINTMENTS; PROVIDING A DIRECT APPOINTMENT PROCESS FOR THE GOVERNOR TO APPOINT DISTRICT COURT JUDGES AND SUPREME COURT JUSTICES TO FILL JUDICIAL VACANCIES; REPEALING THE JUDICIAL NOMINATION COMMISSION; AMENDING SECTIONS 2-15-1707, 3-7-221, AND 39-71-2901, MCA; REPEALING SECTIONS 3-1-1001, 3-1-1002, 3-1-1003, 3-1-1004, 3-1-1005, 3-1-1006, 3-1-1007, 3-1-1008, 3-1-1009, 3-1-1010, 3-1-1011, 3-1-1012, 3-1-1013, AND 3-1-1014, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Judicial vacancy -- notice. (1) (a) Upon receiving notice from the chief justice of the supreme court, the governor shall appoint a candidate, as provided in [sections 1 through 7], to fill any vacancy on the supreme court or the district court.

(b) (i) Members of the governor's family are ineligible for appointment.

(ii) The lieutenant governor, members of the governor's personal staff, and cabinet-level appointees are ineligible for appointment for a period of 2 years after leaving their positions.

~~(b)(c)~~ The chief justice of the supreme court shall appoint a candidate to fill any term or vacancy for the chief water judge or associate water judge pursuant to 3-7-221.

(2) Within 10 days of the date of receipt by the governor of the notice from the chief justice of the supreme court that a vacancy has occurred or the effective date of a judicial resignation has been announced, the governor shall notify the public, including media outlets with general statewide circulation and other appropriate sources, that a vacancy has been announced, including the deadline within which applications must be received.

NEW SECTION. Section 2. Investigation -- qualifications for appointment. (1) The governor may

1 authorize investigations concerning the qualifications of eligible persons.

2 (2) A lawyer in good standing who has the qualifications set forth by law for holding judicial office may
3 be a candidate and may apply to the governor for consideration, or application may be made by any person on
4 the lawyer's behalf.

5
6 **NEW SECTION. Section 3. Applications.** An eligible person may apply for the vacant judicial
7 position by completing and submitting to the governor an original signed paper application and an electronic
8 copy of the original application by the deadline date. The deadline date must be within 40 days of the
9 governor's receipt of the notice of vacancy provided by the chief justice.

10
11 **NEW SECTION. Section 4. Public comment.** (1) The governor shall establish a reasonable period
12 for reviewing applications and interviewing applicants that provides at least 30 days for public comment
13 concerning applicants.

14 (2) ~~At the close of the public comment period provided for in subsection (1), the applicants in~~
15 ~~subsection (1) EACH APPLICANT WHO HAS THE QUALIFICATIONS SET FORTH BY LAW FOR HOLDING JUDICIAL OFFICE AND~~
16 ~~WHO RECEIVES A LETTER OF SUPPORT FROM AT LEAST THREE ADULT MONTANA RESIDENTS BY THE CLOSE OF THE~~
17 ~~PUBLIC COMMENT PERIOD PROVIDED FOR IN SUBSECTION (1) must be considered ~~nominees~~ A NOMINEE for the~~
18 position.

19 (3) The total time from receipt of notice of a vacancy until appointment may not exceed 100 days.

20 (4) The application, public comment, and any related documents are open to the public except when
21 the demands of individual privacy clearly exceed the merits of public disclosure.

22
23 **NEW SECTION. Section 5. Appointments.** (1) The governor, or the chief justice of the supreme
24 court for the office described in 3-7-221, shall make an appointment within 30 days of the close of the public
25 comment period from the list of applicants.

26 (2) For purposes of Article VII, section 8, of the Montana constitution, the governor must be construed
27 to receive the names of the nominees at the close of the public comment period provided for in [section 4].

28 (3) If the governor fails to appoint within 30 days of the close of the public comment period provided

1 for in subsection (1), the chief justice shall make the appointment from the same list of applicants within 30
2 days of the governor's failure to appoint.

3

4 **NEW SECTION. Section 6. Senate confirmation -- exception -- nomination in interim --**
5 **appointment contingent on vacancy.** (1) (a) Except as provided in subsection (2):

6 (i) each appointment must be confirmed by the senate; and

7 (ii) an appointment made while the senate is not in session is effective until the end of the next special
8 or regular legislative session.

9 (b) If the appointment is subject to senate confirmation under subsection (1)(a) and is not confirmed,
10 the office is vacant and another selection of nominees and appointment must be made.

11 (2) The following appointments are not subject to senate confirmation, and there must be an election
12 for the office at the general election immediately preceding the scheduled expiration of the term or following the
13 appointment, as applicable:

14 (a) an appointment made while the senate is not in session if the term to which the appointee is
15 appointed expires prior to the next legislative session, regardless of the time of the appointment in relation to
16 the candidate filing deadlines for the office; and

17 (b) an appointment made while the senate is not in session if a general election will be held prior to
18 the next legislative session and the appointment is made prior to the candidate filing deadline for primary
19 elections under 13-10-201(7), in which case the position is subject to election at the next primary and general
20 elections.

21 (3) A nomination is not effective unless a vacancy in office occurs.

22

23 **NEW SECTION. Section 7. Duration of appointment -- election for remainder of term.** (1) If an
24 appointment subject to [section 5] is confirmed by the senate, the appointee shall serve until the appointee or
25 another person elected at the first general election after confirmation is elected and qualified. The candidate
26 elected at that election holds the office for the remainder of the unexpired term.

27 (2) If an incumbent judge or justice files for election to the office to which the judge or justice was
28 elected or appointed and no other candidate files for election to that office, the name of the incumbent must

1 nevertheless be placed on the general election ballot to allow voters of the district or state to approve or reject
2 the incumbent. If an incumbent is rejected at an election for approval or rejection, the incumbent shall serve
3 until the day before the first Monday of January following the election, at which time the office is vacant and
4 another appointment must be made.

5

6 **Section 8.** Section 2-15-1707, MCA, is amended to read:

7 **"2-15-1707. Office of workers' compensation judge -- allocation -- appointment -- salary.** (1)

8 There is the office of workers' compensation judge. The office is allocated to the department of labor and
9 industry for administrative purposes only as prescribed in 2-15-121.

10 (2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same
11 manner provided by ~~Title 3, chapter 1, part 10~~ sections 1 through 7, for the appointment of supreme court
12 justices or district court judges. A vacancy must be filled in the same manner as the original appointment.

13 (3) To be eligible for workers' compensation judge, a person must:

14 (a) have the qualifications necessary for district court judges found in Article VII, section 9, of the
15 Montana constitution;

16 (b) devote full time to the duties of workers' compensation judge and not engage in the private
17 practice of law.

18 (4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a
19 district judge but must be accorded retirement benefits under the public employees' retirement system."

20

21 **Section 9.** Section 3-7-221, MCA, is amended to read:

22 **"3-7-221. Appointment of chief water judge and associate water judge -- terms of office.** (1) The
23 chief justice of the Montana supreme court shall appoint a chief water judge as provided in ~~Title 3, chapter 1,~~
24 ~~part 10~~ sections 1 through 7. The chief justice of the Montana supreme court may appoint an associate water
25 judge as provided in ~~Title 3, chapter 1, part 10.~~

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

1 (3) The term of office of the chief water judge and the associate water judge is 4 years, subject to
2 continuation of the water divisions by the legislature."
3

4 **Section 10.** Section 39-71-2901, MCA, is amended to read:

5 **"39-71-2901. Location of office -- court powers -- withdrawal -- substitution -- vacancy.** (1) The
6 principal office of the workers' compensation judge must be in the city of Helena.

7 (2) The workers' compensation court has power to:

8 (a) preserve and enforce order in its immediate presence;

9 (b) provide for the orderly conduct of proceedings before it and its officers;

10 (c) compel obedience to its judgments, orders, and process in the same manner and by the same
11 procedures as in civil actions in district court;

12 (d) compel the attendance of persons to testify; and

13 (e) punish for contempt in the same manner and by the same procedures as in district court.

14 (3) The workers' compensation judge shall withdraw from all or part of any matter if the judge believes
15 the circumstances make disqualification appropriate. In the case of a withdrawal, the workers' compensation
16 judge shall designate and contract for a substitute workers' compensation judge to preside over the proceeding
17 from the list provided for in subsection (7).

18 (4) If the office of the workers' compensation judge becomes vacant and before the vacancy is
19 permanently filled pursuant to ~~Title 3, chapter 1, part 10~~ [sections 1 through 7], the chief justice of the Montana
20 supreme court shall appoint a substitute judge within 30 days of receipt of the notice of vacancy. The chief
21 justice shall select a substitute judge from the list provided for in subsection (7) or from the pool of retired state
22 district court judges. The chief justice may appoint a substitute judge for a part of the vacancy or for the entire
23 duration of the vacancy, and more than one substitute judge may be appointed to fill a vacancy.

24 (5) If a temporary vacancy occurs because the workers' compensation judge is suffering from a
25 disability that temporarily precludes the judge from carrying out the duties of office for more than 60 days, a
26 substitute judge must be appointed from the substitute judge list identified in subsection (7) by the current
27 judge, if able, or by the chief justice of the supreme court. The substitute judge may not serve more than 90
28 days after appointment under this subsection. This subsection applies only if the workers' compensation judge

1 is temporarily unable to carry out the duties of office due to a disability, and proceedings to permanently replace
2 the judge under ~~Title 3, chapter 1, part 10~~ sections 1 through 7, may not be instituted.

3 (6) A substitute judge must be compensated at the same hourly rate charged by the department of
4 justice agency legal services bureau for the provision of legal services to state agencies. A substitute judge
5 must be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. When a substitute judge
6 has accepted jurisdiction, the clerk of the workers' compensation court shall mail a copy of the assumption of
7 jurisdiction to each attorney or party of record. The certificate of service must be attached to the assumption of
8 jurisdiction form in the court file.

9 (7) The workers' compensation judge shall maintain a list of persons who are interested in serving as
10 a substitute workers' compensation judge in the event of a recusal by the judge or a vacancy and who prior to
11 being put on the list of potential substitutes have been admitted to the practice of law in Montana for at least 5
12 years, currently reside in Montana, and have resided in the state for 2 years."

13
14 NEW SECTION. Section 11. Repealer. The following sections of the Montana Code Annotated are
15 repealed:

- 16 3-1-1001. Creation, composition, and function of commission.
- 17 3-1-1002. Staggered terms of members.
- 18 3-1-1003. Vacancies.
- 19 3-1-1004. No compensation -- travel expenses.
- 20 3-1-1005. Commission members not eligible for judicial office.
- 21 3-1-1006. Secretary -- election and duties.
- 22 3-1-1007. Commission to make rules -- confidentiality of proceedings.
- 23 3-1-1008. Quorum.
- 24 3-1-1009. Investigation by commission -- application for consideration.
- 25 3-1-1010. Lists submitted to governor and chief justice -- report on proceedings.
- 26 3-1-1011. Governor or chief justice of the supreme court to nominate from list.
- 27 3-1-1012. When governor fails to nominate.
- 28 3-1-1013. Senate confirmation -- exception -- nomination in the interim -- appointment contingent on

Amendment - 2nd Reading - Requested by: Jen Gross

67th Legislature

Drafter: Julianne Burkhardt, 406-444-4025

SB 140.2.2

1 vacancy.

2 3-1-1014. Duration of appointment -- election for remainder of term.

3

4 NEW SECTION. Section 12. Codification instruction. [Sections 1 through 7] are intended to be
5 codified as an integral part of Title 3, chapter 1, and the provisions of Title 3, chapter 1, apply to [sections 1
6 through 7].

7

8 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

9

- END -

DRAFT