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SENATE BILL NO. 72

INTRODUCED BY S. FITZPATRICK

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE POWERS, DUTIES, TERMS, DESIGNATIONS, APPOINTMENTS, OPERATIONS, AND JURISDICTION OF THE WATER COURT; PROVIDING FOR THE GOVERNOR'S APPOINTMENT OF WATER JUDGES; PROVIDING FOR WATER COURT JURISDICTION OVER WATER DISTRIBUTION; REVISING THE APPOINTMENT OF WATER COMMISSIONERS; DESIGNATING WATER JUDGES TO WATER DIVISIONS; PROVIDING THAT WATER JUDGES ENFORCE FINAL DECREES; PROVIDING FOR A WATER COURT ADMINISTRATOR; REVISING THE POWERS AND DUTIES OF WATER MASTERS; REVISING THE PROCESS TO PETITION FOR DEPARTMENT ACTION ON UNPERFECTED WATER RIGHTS; REVISING JUDICIAL REVIEW OF CERTAIN CONTESTED CASES; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-4-702, 3-1-101, 3-1-901, 3-1-905, 3-7-101, 3-7-102, 3-7-103, 3-7-201, 3-7-202, 3-7-203, 3-7-204, 3-7-211, 3-7-212, 3-7-221, 3-7-223, 3-7-224, 3-7-301, 3-7-311, 3-7-401, 3-7-501, 3-7-502, 19-5-301, 85-2-112, 85-2-114, 85-2-122, 85-2-123, 85-2-125, 85-2-236, 85-2-309, 85-2-313, 85-2-314, 85-2-315, 85-2-405, 85-2-406, 85-5-101, 85-5-102, 85-5-103, 85-5-104, 85-5-106, 85-5-107, 85-5-108, 85-5-109, 85-5-110, 85-5-111, 85-5-201, 85-5-202, 85-5-203, 85-5-204, 85-5-205, 85-5-206, 85-5-301, AND 85-5-407, MCA; REPEALING SECTIONS 3-7-222 AND 3-7-225, MCA; AND PROVIDING EFFECTIVE DATES."

WHEREAS, Article VII, section 1, of the Montana Constitution provides that the "judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law"; and

WHEREAS, the Montana Legislature possesses the authority to constitute a water court and similarly set forth mechanisms for the appointment and election of judges for the court; and

WHEREAS, neither the Water Court nor its judgeships are mandated or created by the Montana Constitution but rather are judgeships maintained by the Montana Legislature.

1 **"3-7-401. Definitions.** For the purposes of this part, the following definitions apply:

2 (1) "Fiduciary" includes such relationships as executor, administrator, trustee, or guardian.

3 (2) "Financial interest" means ownership of a legal or equitable interest, however small, or a
4 relationship as director, advisor, or other active participant in the affairs of a party, except that:

5 (a) ownership in a mutual or common investment fund that holds securities is not a financial
6 interest in such securities unless the judge or water master participates in the management of the fund;

7 (b) an office in an educational, religious, charitable, fraternal, or civic organization is not a financial
8 interest in securities held by the organization;

9 (c) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a
10 mutual savings association or a similar proprietary interest is a financial interest in the organization only if the
11 outcome of the proceeding could substantially affect the value of the interest; and

12 (d) ownership of government securities is a financial interest in the issuer only if the outcome of the
13 proceeding could substantially affect the value of the securities.

14 (3) "Proceeding" includes a prehearing, hearing, or appellate review, or other stages of
15 adjudication conducted by the water master or water judge."

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17 **Section 22.** Section 3-7-501, MCA, is amended to read:

18 **"3-7-501. Jurisdiction.** ~~(1) The jurisdiction of each judicial district concerning the determination and~~
19 ~~interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively~~
20 ~~by it through the water division or water divisions that contain the judicial district wholly or partly. The water~~
21 court has the **exclusive** jurisdiction to preside over and determine all matters assigned to the water court
22 pursuant to 3-7-101.

23 (2) A water judge may not preside over matters ~~concerning the determination and interpretation of~~
24 ~~cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-~~
25 ~~102 for the judge's division except as provided in 3-7-201.~~

26 ~~(3) The water judge for each division shall exercise jurisdiction over all matters concerning cases~~
27 ~~certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights~~
28 ~~within the judge's division as specified in 3-7-102 that are considered filed in or transferred to a judicial district~~

1 wholly or partly within the division.

2 (4) ~~The determination and interpretation of existing water rights includes, without limitation, the~~
3 ~~adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the~~
4 ~~final decree."~~

5

6 **Section 23.** Section 3-7-502, MCA, is amended to read:

7 **"3-7-502. Jurisdictional disputes.** Whenever a question arises concerning which water judge shall
8 preside over adjudication of a matter concerning a case certified to the court under 85-2-309 or the
9 determination and interpretation of existing water rights a case that could be heard in more than one water
10 division, the question shall be settled by the water judges involved chief water judge."

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12 **Section 24.** Section 19-5-301, MCA, is amended to read:

13 **"19-5-301. Membership -- inactive vested members -- inactive nonvested members.** (1) Except
14 for a judge or justice who elected in writing to remain under the public employees' retirement system on or
15 before October 1, 1985, a judge of a district court, a justice of the supreme court, and ~~the chief water judge or~~
16 ~~associate water judge~~ a water judge provided for in 3-7-221 must be members of the Montana judges'
17 retirement system.

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

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

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

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27 **Section 25.** Section 85-2-112, MCA, is amended to read:

28 **"85-2-112. Department duties.** The department shall:

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NEW SECTION. Section 55. Repealer. The following sections of the Montana Code Annotated are repealed:

- 3-7-222. Salary -- office space.
- 3-7-225. (Temporary) Duties of associate water judge.

NEW SECTION. Section 56. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. SECTION 57. TRANSITION. IN ORDER TO STAGGER THE TERMS OF WATER COURT JUDGES AND TO END INITIAL TERMS CONSISTENTLY WITH 3-5-203, THE INITIAL TERM OF A WATER JUDGE MAY BE LESS THAN 6 YEARS AT THE DISCRETION OF THE APPOINTING OFFICIAL.

NEW SECTION. Section 58. Codification instruction. (1) [Section 5] is intended to be codified as an integral part of Title 3, chapter 7, and the provisions of Title 3, chapter 7, apply to [section 5].

(2) [Section 9] is intended to be codified as an integral part of Title 3, chapter 7, part 1, and the provisions of Title 3, chapter 7, part 1, apply to [section 9].

NEW SECTION. Section 59. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) ~~[Section 33]~~ ~~[Section 32]~~ is effective 120 days after [the effective date provided in subsection (1)] in basins ~~that~~ FOR WHICH a water judge has entered a final decree pursuant to 85-2-234.

- END -