

Amendment - 2nd Reading-yellow - Requested by: Marty Malone - (H) Committee of the Whole

- 2023

68th Legislature 2023

Drafter: Jason Mohr, 406-444-1640

HB0942.001.001

1 HOUSE BILL NO. 942

2 INTRODUCED BY M. MALONE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO WATER COMMISSIONERS;
5 LIMITING THE COMPENSATION OF WATER COMMISSIONERS; PROVIDING FOR 1-YEAR TERMS FOR
6 WATER COMMISSIONERS; PROVIDING FOR THE ACCOUNTING OF OTHER COSTS FROM WATER
7 COMMISSIONERS; REQUIRING AN EDUCATION FEE; AMENDING SECTIONS 85-5-101, 85-5-102, 85-5-
8 104, 85-5-107, 85-5-111, 85-5-201, 85-5-204, AND 85-5-301, MCA; AND REPEALING SECTION 85-5-203,
9 MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 85-5-101, MCA, is amended to read:

14 **"85-5-101. Appointment of water commissioners.** (1) (a) Whenever the rights of persons to use the
15 waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply
16 have been determined by a decree of a court of competent jurisdiction, including temporary preliminary,
17 preliminary, and final decrees issued by a water judge, it is the duty of the judge of the district court having
18 jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected
19 by the decree or at least 15% of the flow rate of the water rights affected by the decree and after notice of the
20 application and an opportunity to comment by all water right holders subject to the enforcement application, in
21 the exercise of the judge's discretion, to appoint one or more commissioners.

22 (b) The commissioners have authority to admeasure and distribute to the parties owning water
23 rights in the source affected by the decree the waters to which they are entitled, according to their rights as
24 fixed by the decree and by any certificates, permits, and changes in appropriation right issued under chapter 2
25 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners
26 of at least 15% of the water rights affected or at least 15% of the flow rate of the water rights affected and they
27 are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may

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1 appoint a water commissioner.

2 (2) When the existing rights of all appropriators from a source or in an area have been determined
3 in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the
4 judge of the district court may, upon application by both the department of natural resources and conservation
5 and one or more holders of valid water rights in the source, appoint a water commissioner. The water
6 commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are
7 entitled.

8 (3) The department of natural resources and conservation or any person or corporation operating
9 under contract with the department or any other owner of stored waters may petition the court to have stored
10 waters distributed by the water commissioners appointed by the district court. The court may order the
11 commissioner or commissioners appointed by the court to distribute stored water when and as released to
12 water users entitled to the use of the water.

13 (4)—(a) At the time of the appointment of a water commissioner or commissioners, the district court
14 shall fix their compensation subject to subsection (4)(b), require a commissioner or commissioners to purchase
15 a workers' compensation insurance policy and elect coverage on themselves, and require the owners and users
16 of the distributed waters, including permittees, certificate holders, and holders of a change in appropriation
17 right, to pay their proportionate share of fees and compensation, including the cost of workers' compensation
18 insurance purchased by a water commissioner or commissioners. The judge may include the department in the
19 apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

20 (b) Compensation for a water commissioner may not exceed ~~15%-25%~~ of the annual salary, not
21 including benefits, of the judge appointing and overseeing the water commissioner. If there is more than one
22 water commissioner, the total compensation may not exceed the annual salary, not including benefits, of the
23 judge appointing and overseeing the water commissioners, except that each water commissioner may not
24 receive compensation in excess of ~~15% 25%~~ of the annual salary of the judge, not including benefits.

25 (5) Upon the application of the board or boards of one or more irrigation districts entitled to the use
26 of water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at
27 a point downstream for beneficial use, the district court of the judicial district where the most irrigable acres of

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1 the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and
2 distribute stored water to the irrigation district or districts from the channel of the stream into which it has been
3 turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under
4 this chapter, limited only by the purposes of this subsection. A commissioner's compensation is set by the
5 appointing judge and paid by each district and other users of stored water affected by the admeasurement and
6 distribution of the stored water. In all other matters, the provisions of this chapter apply so long as they are
7 consistent with this subsection.

8 (6) A water commissioner appointed by a district court is not an employee of the judicial branch, a
9 local government, or a water user.

10 (7) A water commissioner who fails to obtain workers' compensation insurance coverage required
11 by subsection (4) is precluded from receiving benefits under Title 39, chapter 71, as a result of the performance
12 of duties as a water commissioner.

13 (8) A water commissioner must reside in the water division, as described in 3-7-102, in which the
14 water commissioner admeasures and distributes waters.

15 (9) The term for a water commissioner may not exceed 1 year from the date of appointment unless
16 the water commissioner is reappointed pursuant to the petition process required by this section."

17

18 **Section 2.** Section 85-5-102, MCA, is amended to read:

19 **"85-5-102. Appointment of chief commissioner.** (1) When the judge of the district court appoints
20 two or more commissioners to admeasure and distribute the waters mentioned in 85-5-101, the judge may
21 appoint one of them as chief commissioner and empower the chief commissioner to exercise direction and
22 control over the other commissioners in the discharge of their duties. The judge may depose the person
23 appointed as chief commissioner from that position and appoint another as chief commissioner whenever it
24 appears to the judge that better service may be given to the water users by making the change.

25 (2) A chief commissioner must reside in the water division, as described in 3-7-102, in which the
26 water commissioner admeasures and distributes waters.

27 (3) Subject to 85-5-101(4)(b), compensation for a chief commissioner may not exceed ~~15%~~ 25% of

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1 the annual salary, not including benefits, of a judge appointing and overseeing the chief commissioner.

2 (4) The term for a chief commissioner may not exceed 1 year from the date of appointment unless
3 the chief commissioner is reappointed pursuant to this section and the petition process required by 85-5-101."

4

5 **Section 3.** Section 85-5-104, MCA, is amended to read:

6 **"85-5-104. Term of office.** A (1) Subject to subsection (2), a water commissioner holds office for the
7 time during the irrigation season of each year that may be designated by the judge in the order making the
8 appointment. The judge may fix the date of the commencement of the term and may, in in the judge's discretion
9 or when requested in writing by at least three persons entitled to the use of the waters, change the term for
10 closing of the commissioner's service.

11 (2) The term for a water commissioner may not exceed 1 year from the date of appointment unless
12 the water commissioner is reappointed pursuant to the petition process required by 85-5-101."

13

14 **Section 4.** Section 85-5-107, MCA, is amended to read:

15 **"85-5-107. Record of distribution of water.** (1) (a) Each water commissioner shall keep a daily
16 record, unless a different recording schedule is ordered by the district judge, of the amount of water distributed
17 to each water user and shall file a summary of the record with the clerk of the court monthly or seasonally, at
18 the discretion of the district judge during the judge's term of service. The report must show in detail the total
19 amount of water distributed to each water user during the month or the season and the cost of distributing the
20 water, based upon the water commissioner's or commissioners' daily salary, other costs of the water
21 commissioner or commissioners approved by the district judge and subject to subsection (1)(b), and the
22 proportionate amount of water distributed. When two or more water commissioners serve under the same
23 decree or decrees by order of the judge, they may file a joint summary of their records with the clerk of the
24 court, or the chief commissioner, if one has been appointed by the judge, may file a summary on behalf of all of
25 them.

26 (b) A water commissioner shall provide the district judge with an itemized accounting of other
27 costs. These other costs must be reasonable and necessary for the distribution of water.