_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE JUDICIAL NOMINATION COMMISSION; PROVIDING COMPOSITION, TERMS, VACANCY PROCEDURE, EXPENSES, PROCEDURAL RULES, INVESTIGATION OF APPLICANTS, SELECTION PROCESS, AND SENATE CONFIRMATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-1707, 3-7-221, AND 39-71-2901, MCA; AND REPEALING SECTIONS 3-1-901, 3-1-902, 3-1-903, 3-1-904, 3-1-905, 3-1-906, AND 3-1-907, MCA."

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

NEW SECTION. **Section 1. Creation -- composition -- function of commission.** (1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court and to provide the chief justice of the supreme court with a list of candidates for appointment to fill any term or vacancy for the chief water judge or associate water judge pursuant to 3-7-221. The commission is composed of seven members as follows:

(a) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively engaged or retired, who are appointed by the governor;

(b) two attorneys actively engaged in the practice of law, one from that part of the state that is composed of judicial districts 1 through 5, 9, 11, and 18 through 21 and one from that part of the state that is composed of judicial districts 6 through 8, 10, 12 through 17, and 22, who are appointed by the supreme court;

(c) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to election by the chief justice of the supreme court. The election is considered an appointment for the purposes of [sections 1 through 14].

(2) Appointments provided for in this section must be made within 30 days of the completion of the preceding terms.

NEW SECTION. **Section 2. Staggered terms of members.** (1) Members of the commission shall serve staggered 4-year terms.

(2) A member may not serve more than two full 4-year terms.

NEW SECTION. **Section 3. Vacancies.** (1) In the event that a vacancy on the commission occurs, the governor shall appoint a replacement for the remainder of the term. The replacement must be a member of the same group as the member being replaced.

(2) An appointment provided for in this section must be made within 30 days of the occurrence of the vacancy.

NEW SECTION. **Section 4. No compensation -- travel expenses.** The members of the commission are not entitled to compensation for their services, but they are entitled to travel expenses, as provided for in 2-18-501 through 2-18-503, while actually engaged in the discharge of their official duties.

NEW SECTION. **Section 5. Commission members not eligible for judicial office.** Members of the commission are not eligible for nomination to a judicial office during their term on the commission or for 1 year thereafter.

NEW SECTION. **Section 6. Secretary -- election and duties.** (1) The commission shall elect one of its members to serve as the secretary and shall notify the governor of the name and mailing address of person elected to serve as secretary.

(2) The secretary shall keep a record of all proceedings by the commission and act as corresponding secretary with the governor's office and with the office of the chief justice of the supreme court.

NEW SECTION. **Section 7. Commission to make rules -- confidentiality of proceedings.** (1) The commission shall adopt and publish rules:

(a) for the conduct of its affairs and the format of reports filed under [section 10];

(b) establishing a procedure for providing the public with notice of a vacancy within 10 days of

receipt of the notice of the vacancy;

(c) establishing an application period of not less than 30 days from the date of public notice under subsection (1)(b) and the procedure for applying for a position; and

(d) establishing a reasonable period for reviewing applications and interviewing applicants that provides at least 30 days for public comment concerning applicants.

(2) A copy of the rules must be filed with the clerk of the supreme court.

(3) The total time from receipt of notice of a vacancy until a list of names is submitted to the governor or chief justice may not exceed 90 days.

(4) The proceedings of the commission and the related documents must be open to the public except when the demands of individual privacy clearly exceed the merits of public disclosure.

NEW SECTION. **Section 8. Quorum.** Four members of the commission shall constitute a quorum for the transaction of business. To submit a name to the governor or to the chief justice of the supreme court, there must be a concurrence of at least four members.

NEW SECTION. **Section 9. Investigation by commission -- application for consideration.** (1) The commission and each member are authorized to make investigations concerning the qualifications of eligible persons.

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

NEW SECTION. **Section 10. Lists submitted to governor and chief justice -- report on proceedings.** (1) If a supreme court justice, a district court judge, the workers' compensation judge, the associate water judge, or the chief water judge gives notice of the judge's resignation to take effect on a specific date, the commission shall meet as soon as possible after the justice's or judge's proposed resignation date has been verified by the chief justice of the supreme court. If notice is not given, the commission shall meet as soon as possible after a vacancy occurs. The meeting must be held in compliance with [section 7]. The

commission shall submit to the governor or chief justice, within the time period established under [section 7], a list of not less than three or more than five nominees for appointment to the vacant position.

(2) The list must be accompanied by a written report indicating the vote on each nominee, the content of the application submitted by each nominee, letters and public comments received regarding each nominee, and the commission's reasons for recommending each nominee for appointment. The report must give specific reasons for recommending each nominee.

NEW SECTION. **Section 11. Governor or chief justice of the supreme court to nominate from list.** The governor, or the chief justice of the supreme court for the offices described in 3-7-221, shall make a nomination from the list of nominees submitted by the commission.

NEW SECTION. **Section 12. When governor fails to nominate.** If the governor fails to nominate within 30 days after receipt of the list of nominees, the chief justice or acting chief justice shall make the nomination.

NEW SECTION. **Section 13. Senate confirmation -- exception -- nomination in the interim -- appointment contingent on vacancy.** (1) (a) Except as provided in subsection (2):

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

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

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

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

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

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

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

NEW SECTION. **Section 14. Duration of appointment -- election for remainder of term.** (1) If an appointment subject to [section 13(1)] is confirmed by the senate, the appointee shall serve until the appointee or another person elected at the first general election after confirmation is elected and qualified. The candidate elected at that election holds the office for the remainder of the unexpired term.

(2) If an appointment is subject to [section 13(2)], the appointee shall serve until the day before the first Monday of January following the first general election after appointment. The candidate elected at that election holds the office for the full term to which elected or for the remainder of the unexpired term, as applicable.

(3) If an incumbent judge or justice files for election to the office to which the judge or justice was elected or appointed and no other candidate files for election to that office, the name of the incumbent must nevertheless be placed on the general election ballot to allow voters of the district or state to approve or reject the incumbent. If an incumbent is rejected at an election for approval or rejection, the incumbent shall serve until the day before the first Monday of January following the election, at which time the office is vacant and another selection and appointment must be made.

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

"**2-15-1707. Office of workers' compensation judge -- allocation -- appointment -- salary.** (1) There is the office of workers' compensation judge. The office is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by ~~Title 3, chapter 1, part 9~~ [sections 1 through 14], for the appointment of supreme court justices or district court judges. A vacancy must be filled in the same manner as the original appointment.

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

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

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

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

Section 16. Section 3-7-221, MCA, is amended to read:

"**3-7-221. Appointment of chief water judge and associate water judge -- terms of office.** (1) The chief justice of the Montana supreme court shall appoint a chief water judge as provided in ~~Title 3, chapter 1, part 9~~ [sections 1 through 14]. The chief justice of the Montana supreme court may appoint an associate water judge as provided in [sections 1 through 14].

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

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

Section 17. Section 39-71-2901, MCA, is amended to read:

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

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

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

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

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

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

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

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

(4) If the office of the workers' compensation judge becomes vacant and before the vacancy is permanently filled pursuant to ~~Title 3, chapter 1, part 9~~ [sections 1 through 14], the chief justice of the Montana supreme court shall appoint a substitute judge within 30 days of receipt of the notice of vacancy. The chief justice shall select a substitute judge from the list provided for in subsection (7) or from the pool of retired state district court judges. The chief justice may appoint a substitute judge for a part of the vacancy or for the entire duration of the vacancy, and more than one substitute judge may be appointed to fill a vacancy.

(5) If a temporary vacancy occurs because the workers' compensation judge is suffering from a disability that temporarily precludes the judge from carrying out the duties of office for more than 60 days, a substitute judge must be appointed from the substitute judge list identified in subsection (7) by the current judge, if able, or by the chief justice of the supreme court. The substitute judge may not serve more than 90 days after appointment under this subsection. This subsection applies only if the workers' compensation judge is temporarily unable to carry out the duties of office due to a disability, and proceedings to permanently replace the judge under ~~Title 3, chapter 1, part 9~~ [sections 1 through 14], may not be instituted.

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

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

NEW SECTION. **Section 18. Repealer.** The following sections of the Montana Code Annotated are repealed:

3-1-901. Judicial vacancy -- notice.
3-1-902. Investigation -- qualifications for appointment.
3-1-903. Applications.
3-1-904. Public comment.
3-1-905. Appointments.
3-1-906. Senate confirmation -- exception -- nomination in interim -- appointment contingent on vacancy.
3-1-907. Duration of appointment -- election for remainder of term.

NEW SECTION. **Section 19. Codification instruction.** [Sections 1 through 14] are intended to be codified as an integral part of Title 3, chapter 1, and the provisions of Title 3, chapter 1, apply to [sections 1 through 14].

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