

SENATE BILL NO. 385

INTRODUCED BY T. MCGILLVRAY

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA GOVERNMENT CLAIMS COURT; PROVIDING FOR APPOINTMENT AND CONFIRMATION OF JUDGES; PROVIDING FOR SUPERVISION AND ADMINISTRATION OF THE COURT AND PERSONNEL; PROVIDING JURISDICTION FOR THE COURT; PROVIDING FOR PROCEDURE, VENUE, HEARINGS, RULES OF PROCEDURE, JURIES, APPEALS, AND A REMOVAL PROCESS; AMENDING SECTIONS 2-4-702, 3-1-101, 3-1-102, 3-1-201, 3-5-115, 3-5-302, 3-20-102, AND 19-5-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, Article VII, section 1, of the Montana constitution allows for "such other courts as may be provided by law"; and

WHEREAS, Article VII, section 4, of the Montana constitution allows for other courts to have "jurisdiction concurrent with that of the district court as may be provided by law"; and

WHEREAS, the Montana Legislature has used this constitutional authority to create other courts, including the water court, asbestos claims court, workers' compensation court, small claims courts, municipal courts, and city courts.

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

NEW SECTION. Section 1. Government claims court -- appointment -- oath of office -- term of office. (1) There is created a government claims court.

(2) The government claims court consists of three judges appointed by the governor and confirmed by the senate in the same manner as provided by Title 3, chapter 1, part 9. The judges must be designated by seat 1, seat 2, and seat 3.

(3) Each judge of the government claims court shall, as soon as the judge has taken and subscribed the official oath, file the official oath in the office of the secretary of state.

(4) Judges of the government claims court serve 6-year staggered terms. The years during which a judge of the government claims court is to hold office are to be computed respectively from and including January 1 of any one year to and excluding January 1 of the next succeeding year.

(5) After receiving notice from the chief justice of the supreme court of a vacancy on the government claims court, the governor shall appoint an individual meeting the qualifications in [section 2] in accordance with Title 3, chapter 1, part 9.

NEW SECTION. Section 2. Qualifications. An individual is not eligible for the office of judge of the government claims court unless the individual is a citizen of the United States, has resided in the state for 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment.

NEW SECTION. Section 3. Salary and expenses. (1) A judge of the government claims court must be paid a salary that is 20% greater than the salary for an associate justice of the supreme court as provided in 2-16-403. The salary of a judge of the government claims court may not be reduced during that judge's term of office.

(2) Actual and necessary expenses for each judge of the government claims court are the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of the judge's official duties.

NEW SECTION. Section 4. Hearings -- location -- rules of procedure -- staff -- venue. (1) Matters before the government claims court must be heard by one judge, except that the judge:

(a) may empanel an advisory jury to assist with fact-finding; and

(b) shall empanel a trial jury if a party has not waived the right to a jury trial.

(2) The government claims court shall provide rules of procedure by which a party dissatisfied with a final or interlocutory determination by the trial judge may seek review by all judges of the government claims court sitting together.

(3) The government claims court must have its offices in Helena. The government claims court

1 shall determine the county of venue as follows:

2 (a) While the legislature is not in session, the government claims court may use the old supreme
3 court chambers in the state capitol to conduct trials and hearings in accordance with 2-17-108(2)(a), in which
4 case the county of venue must be Lewis and Clark County.

5 (b) The government claims court shall, in consultation with the parties, designate the county of trial
6 or hearings based on the availability of courtroom facilities, the convenience of the parties, and the needs of
7 justice, in which case the county of venue is the place of trial.

8 (4) (a) The government claims court may hire a clerk of court, a court reporter, law clerks, and
9 administrative staff as needed.

10 (b) A clerk of court hired under this section has the same powers, duties, and responsibilities as a
11 clerk of the district court elected under Title 3, chapter 5, part 5.

12 (c) A court reporter hired under this section has the same powers, duties, and responsibilities as a
13 court reporter appointed under Title 3, chapter 5, part 6.

14

15 NEW SECTION. Section 5. Supervision and administration. (1) The supreme court shall supervise
16 the activities of the government claims court and associated personnel.

17 (2) Salaries and expenses for the government claims court must be paid from appropriations made
18 for that purpose.

19 (3) As used in this section, "salaries and expenses" includes but is not limited to the salaries and
20 expenses of personnel, the cost of office equipment, courtroom space, and office space, and other necessary
21 expenses that may be incurred in the administration of [sections 1 through 14].

22

23 NEW SECTION. Section 6. Powers of judges at chambers. A judge of the government claims court
24 possesses all powers at chambers of a district court judge at chambers as provided in 3-5-311.

25

26 NEW SECTION. Section 7. Process. The process of the government claims court extends to all
27 parts of the state.

28

NEW SECTION. Section 8. Jurisdiction of judges coextensive with state. (1) The jurisdiction of

the judges of the government claims court in rendering and signing judgments, making findings and rendering decrees, and making orders to show cause and all ex parte orders is coextensive with the boundaries of the state as to all matters presented to or heard by the judges and of which they have jurisdiction.

(2) The judgments, findings, decrees, and orders of the judges of the government claims court when rendered, made, or signed have the same force and effect as to matters under the judges' jurisdiction as if done in district court in the county in which the action, proceeding, or matter is pending or was heard.

NEW SECTION. Section 9. Jurisdiction. (1) The government claims court has jurisdiction over civil

actions that involve:

(a) claims for equitable or declaratory relief based on the alleged unconstitutionality of a state action, including but not limited to a legislative enactment, an administrative rule, a permit issued by the state or a local government, or a citizen-passed ballot measure, except that this jurisdiction does not extend to challenges to local zoning regulations;

(b) claims for equitable or declaratory relief based on the alleged illegality of a state action, including but not limited to an administrative rule, a permit issued by the state or a local government, or a citizen-passed ballot measure, except that this jurisdiction does not extend to challenges to local zoning regulations;

(c) petitions for judicial review in which the government claims court has jurisdiction pursuant to 2-4-702; and

(d) civil actions involving asbestos-related claims pursuant to Title 3, chapter 20, part 1.

(2) The government claims court has supplemental jurisdiction over all other claims that are related to the claims in an action in which the court has jurisdiction under subsection (1), except when:

(a) supplemental claims substantially predominate over the claim or claims under subsection (1);

(b) the government claims court has dismissed all claims over which it has jurisdiction under subsection (1); or

(c) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(3) This section may not be construed to extend jurisdiction over criminal cases to the government

1 claims court.

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3 NEW SECTION. Section 10. Rules of procedure. (1) The government claims court shall use the
4 Montana Rules of Civil Procedure and the Montana Rules of Evidence.

5 (2) The government claims court may adopt rules of court governing its practice, but the rules may
6 not conflict with the rules promulgated by the supreme court in accordance with Title 3, chapter 2, part 7.

7

8 NEW SECTION. Section 11. Venue. (1) In an action originally brought in the government claims
9 court, the county of venue is the place of trial as provided in [section 4].

10 (2) In an action removed to the government claims court under [section 12], the county of venue is
11 the county in which the action was originally filed.

12

13 NEW SECTION. Section 12. Removal. (1) A party desiring to remove a civil action from a district
14 court to the government claims court shall file in the district court and the government claims court a notice of
15 removal containing a short, plain statement of the grounds for removal, accompanied by a copy of the
16 summons and any complaints served on the party in the action. A notice of removal must be filed within 30
17 calendar days after the first summons is served or an adverse party has appeared.

18 (2) A civil action may be removed under this section if the district court and the government claims
19 court have concurrent jurisdiction.

20 (3) (a) Promptly after the filing of a notice of removal of a civil action or proceeding, the party shall
21 give written notice to all parties and shall file a copy of the notice with the district court and government claims
22 court.

23 (b) The notice of removal effectuates the removal, and the district court may not proceed any
24 further unless the case is remanded.

25 (c) On receiving a notice of removal, the district court shall transmit the pleadings and all papers in
26 the action to the government claims court immediately.

27 (4) If a party believes the removal is improper, the party shall file a motion to remand in the
28 government claims court within 20 days of service of the notice of removal.

(5) The government claims court may, on motion or on its own, remand a case for the following reasons:

- (a) the government claims court lacks jurisdiction;
- (b) the action involves claims that substantially predominate over the claim or claims for which the government claims court has jurisdiction; or
- (c) the interests of justice or other compelling reasons favor remand.

NEW SECTION. Section 13. Juries. The pool of prospective jurors for an action in the government claims court may be drawn from the county or judicial district in which venue is proper under [section 4]. The jurors must be drawn as provided in Title 3, chapter 15, part 5, from the jury lists of the counties comprising the jury pool and impaneled as provided in Title 25, chapter 7, part 2. The clerk of the district court for the county or judicial district in which the trial is conducted shall notify the prospective jurors.

NEW SECTION. Section 14. Appeals. An appeal from an interlocutory or final decision of the government claims court must be filed directly with the supreme court in the manner provided by law for appeals from the district court in civil cases.

NEW SECTION. Section 15. Seal of government claims court. The government claims court must have a seal, which must be similar to the seal of the district court except as to the name of the court.

Section 16. Section 2-4-702, MCA, is amended to read:

"2-4-702. (Temporary) 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 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, subsection (2)(d), or subsection (2)(e), 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 and all parties of record.

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

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

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

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

(ii) If more than one party is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has

1 jurisdiction.

2 (iii) If a petition for judicial review is filed in the district court, the petition for review must be filed in
3 the district court in the county where the appropriation right is located.

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

8 (4) Within 30 days after the service of the petition or within further time allowed by the court, the
9 agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding
10 under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party
11 unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs.
12 The court may require or permit subsequent corrections or additions to the record. (Terminates September 30,
13 2025--sec. 6, Ch. 126, L. 2017.)

14 **2-4-702. (Effective October 1, 2025) Initiating judicial review of contested cases.** (1) (a) Except
15 as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available
16 within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial
17 review under this chapter. This section does not limit use of or the scope of judicial review available under other
18 means of review, redress, relief, or trial de novo provided by statute.

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

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

parties of record.

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

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

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed:

(i) _____ in the county where the facility is located or proposed to be located or where the action is proposed to occur; or

(ii) _____ in the government claims court as provided in subsection (2)(e).

(e) If a petition for review is filed challenging the validity of a statute on judicial review or a licensing or permitting decision made pursuant to Title 75 or Title 82, the government claims court has jurisdiction and the provisions of this part apply to the government claims court in the same manner as the provisions of this part apply to the district court.

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

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

Section 17. Section 3-1-101, MCA, is amended to read:

"3-1-101. The several courts of this state. The following are courts of justice of this state:

(1) the court of impeachment, which is the senate;

(2) the supreme court;

(3) the district courts;

(4) the government claims court;

~~(4)~~(5) the municipal courts;

~~(5)~~(6) the justices' courts;

~~(6)~~(7) the city courts and such other courts of limited jurisdiction as the legislature may establish in any incorporated city or town."

Section 18. Section 3-1-102, MCA, is amended to read:

"3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, the government claims court, the workers' compensation court, the municipal courts, the justices' courts of record, and the city courts of record are courts of record."

Section 19. Section 3-1-201, MCA, is amended to read:

"3-1-201. What courts have seals. Each of the following courts ~~shall~~must have a seal:

(1) the supreme court;

(2) the district courts;

(3) the government claims court;

~~(3)~~(4) the municipal courts."

Section 20. Section 3-5-115, MCA, is amended to read:

"3-5-115. Agreement, petition, and appointment of judge pro tempore -- waiver of jury trial. (1)

Prior to trial and upon written agreement of all the parties to a civil action, the parties may petition for the appointment of a judge pro tempore. Except as provided in 3-20-102, if the district court judge having jurisdiction over the case where the action was filed finds that the appointment is in the best interest of the parties and serves justice, the district court judge may appoint the judge pro tempore nominated by the parties

1 to preside over the whole action or any aspect of the action as if the regular district court judge were presiding.

2 (2) Except as provided in 3-20-102, an appointment of a judge pro tempore constitutes a waiver of
3 the right to trial by jury by any party having the right.

4 (3) The Unless the case is removed to the government claims court provided for in [sections 1
5 through 14], the supreme court shall appoint the asbestos claims judge as provided in 3-20-102. CURRENT
6 CASES FILED WITH AN ASBESTOS CLAIMS JUDGE MAY BE REMOVED TO THE GOVERNMENT CLAIMS COURT WITHIN 180
7 DAYS OF [THE EFFECTIVE DATE OF THIS ACT]. THEREAFTER, ASBESTOS CLAIMS CASES MUST BE REMOVED TO THE
8 GOVERNMENT CLAIMS COURT AS PROVIDED IN [SECTIONS 1 THROUGH 14].

9
10 (4) The supreme court shall appoint a judge to determine the expungement or resentencing of
11 marijuana convictions as provided in 16-12-115."

12
13 **Section 21.** Section 3-5-302, MCA, is amended to read:

14 **"3-5-302. Original jurisdiction.** (1) The district court has original jurisdiction in:

- 15 (a) all criminal cases amounting to felony;
16 (b) all civil and probate matters;
17 (c) all cases at law and in equity;
18 (d) all cases of misdemeanor not otherwise provided for; and
19 (e) all special actions and proceedings that are not otherwise provided for.

20 (2) The district court has concurrent original jurisdiction with the justice's court in the following
21 criminal cases amounting to misdemeanor:

- 22 (a) misdemeanors arising at the same time as and out of the same transaction as a felony or
23 misdemeanor offense charged in district court;
24 (b) misdemeanors resulting from the reduction of a felony or misdemeanor offense charged in the
25 district court; and
26 (c) misdemeanors resulting from a finding of a lesser included offense in a felony or misdemeanor
27 case tried in district court.

28 (3) The Except as provided in subsection (6), the district court has exclusive original jurisdiction in

all civil actions that might result in a judgment against the state for the payment of money.

(4) The district court has the power of naturalization and of issuing papers for naturalization in all cases where it is authorized to do so by the laws of the United States.

(5) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days.

(6) The district court has concurrent original jurisdiction with the government claims court in matters specified in [section 9]."

Section 22. Section 3-20-102, MCA, is amended to read:

"3-20-102. Asbestos claims judge. (1) A civil action involving an asbestos-related claim may be tried by either of the following:

(a) a judge pro tempore or special master, who must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of record, appointed by the supreme court as provided in 3-5-115, and sworn to try the cause before entering upon the duties in trying the cause. Upon appointment, the individual must be designated as the asbestos claims judge. The right to a jury trial is not waived by the stipulation to and appointment of the asbestos claims judge.

(b) a judge of the government claims court provided for in [sections 1 through 14].

(2) The asbestos claims judge has the authority and power of an elected district court judge in the civil action involving an asbestos-related claim. All proceedings before the asbestos claims judge must be conducted in accordance with the rules of evidence and procedure governing district courts.

(3) Any order, judgment, or decree made or rendered in an asbestos-related civil case by the asbestos claims judge has the same force and effect as if made or rendered by the district court with the regular judge presiding.

(4) A party stipulating to have an asbestos-related claim heard by the asbestos claims judge may not file a motion for substitution of the judge pursuant to 3-1-804.

(5) All filings relating to an asbestos-related claim must be filed with the clerk of court in the judicial

district in which the claim arose. The parties shall provide a copy of each filing to the asbestos claims judge."

Section 23. Section 19-5-301, MCA, is amended to read:

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

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

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

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

NEW SECTION. **Section 24. Transition.** (1) Within 90 days of [the effective date of this act], the governor shall appoint an individual meeting the qualifications in [section 2] to each seat provided in [section 1] according to the following schedule:

(a) the judge appointed to seat 1 shall serve a term that ends on January 1, 2031, and until the judge's successor is appointed;

(b) the judge appointed to seat 2 shall serve a term that ends on January 1, 2029, and until the judge's successor is appointed; and

(c) the judge appointed to seat 3 shall serve a term that ends on January 1, 2027, and until the judge's successor is appointed.

(2) After the expiration of a term provided for in subsection (1), the governor shall appoint an individual to serve a full 6-year term as provided in [section 1].

(3) An individual appointed under subsection (1) may be reappointed to a full 6-year term.

NEW SECTION. Section 25. Codification instruction. (1) [Sections 1 through 14] are intended to be codified as an integral part of Title 3, and the provisions of Title 3 apply to [sections 1 through 14].

(2) [Section 15] is intended to be codified as an integral part of Title 3, chapter 1, part 2, and the provisions of Title 3, chapter 1, part 2, apply to [section 15].

NEW SECTION. Section 26. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 27. Effective date. [This act] is effective July 1, 2025.

NEW SECTION. Section 28. Applicability. [This act] applies to civil actions filed on or after October 1, 2025.

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