

HOUSE BILL NO. 499

INTRODUCED BY C. CLARK

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING JUDICIAL DISCRETION IN DETERMINING IMPARTIALITY OF A WATER COMMISSIONER OR WATER COMMISSIONER APPLICANT; ALLOWING WATER USERS TO REQUEST ACTION FROM A DISTRICT JUDGE CONCERNING THE IMPARTIALITY OF A WATER COMMISSIONER OR WATER COMMISSIONER APPLICANT; AMENDING SECTION 85-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**NEW SECTION. Section 1. Impartiality of water commissioners -- judicial discretion.** (1) The judge

of the district court may refuse to appoint an applicant for water commissioner, appoint a water commissioner with conditions, impose conditions on an appointed water commissioner, or disqualify an appointed water commissioner if the impartiality of the applicant or water commissioner may reasonably be questioned.

(2) The impartiality of the applicant or water commissioner might reasonably be questioned if:

(a) the applicant or the water commissioner has a personal bias or prejudice concerning a water user;

(b) the applicant or the water commissioner, the applicant's or the water commissioner's spouse, or a person or the spouse of a person within the third degree of relationship to any of them, as calculated according to 72-11-101 through 72-11-104, individually or as a fiduciary, has a financial or ownership interest in a water right included in the decree that the water commissioner is or would be appointed to administer.

(3) A district judge should be informed about the applicant's or the water commissioner's personal and fiduciary financial or ownership interests and make a reasonable effort to be informed about the personal and fiduciary financial or ownership interests of the applicant's or the water commissioner's spouse and persons within the third degree of relationship.

(4) Any water user on the source or in an area served by the applicant or the water commissioner may request a district judge to appoint an applicant with conditions or disqualify or impose conditions on an appointed water commissioner if the impartiality of the applicant or water commissioner may reasonably be questioned.

(5) Conditions a district judge may impose include but are not limited to prohibiting a water commissioner from determining the appropriate quantity and distributing water:

1 (a) on a source where the water commissioner, the water commissioner's spouse, or a person or spouse  
 2 of a person within a third degree of relationship to the water commissioner or the water commissioners's spouse  
 3 owns a water right or has an interest in water; or

4 (b) for a water right or an interest in water owned by the water commissioner, the water commissioner's  
 5 spouse, or a person or spouse of a person within a third degree of relationship to the water commissioner or the  
 6 water commissioners's spouse owns a water right or has an interest in water.

7 (6) A person owning or using any of the waters of the stream or ditch or extension of the ditch may file  
 8 an impartiality complaint pursuant to 85-5-301.

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10 **Section 2.** Section 85-5-301, MCA, is amended to read:

11 **"85-5-301. Complaint by dissatisfied user.** (1) A person owning or using any of the waters of the  
 12 stream or ditch or extension of the ditch ~~who is dissatisfied with the method of distribution of the waters of the~~  
 13 ~~stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water~~  
 14 ~~than the person is receiving or to a right prior to that allowed the person by the water commissioner or water~~  
 15 ~~commissioners may file a written complaint, duly verified, setting forth the facts of the claim~~ may file a written  
 16 complaint regarding:

17 (a) the distribution of the waters of the stream or ditch by the water commissioner or water  
 18 commissioners, including but not limited to the quantity or priority date; or

19 (b) the impartiality of an applicant for water commissioner, a water commissioner, or water  
 20 commissioners pursuant to [section 1].

21 (2) Upon receipt of the complaint, the judge shall fix a time for the hearing of the petition and shall direct  
 22 that notice be given to the parties interested in the hearing as the judge considers necessary. ~~At the time fixed~~  
 23 ~~for the hearing, the~~ The judge shall hear and examine the complainant and other parties who appear to support  
 24 or resist the claim and examine the water commissioner or water commissioners and witnesses regarding the  
 25 charges contained in the complaint.

26 (3) ~~Upon the determination of the hearing, the~~ The judge shall make findings and issue an order ~~that the~~  
 27 ~~judge considers just and proper.~~

28 (4) ~~If it appears to the judge that~~ the judge determines that the water commissioner or water  
 29 commissioners have not properly distributed the water according to the provisions of the decree, permit,  
 30 certificate, or change in appropriation right, the judge shall give the proper instructions for distribution of the water.

1           ~~(4)~~(5) The judge ~~may~~ shall remove any water commissioner and appoint a new water commissioner if  
2 the judge determines that the interests of the parties in the waters mentioned in the decree, permit, certificate,  
3 or change in appropriation right will be best served by appointing a new water commissioner.

4           (6) If ~~it appears to~~ the judge determines that the water commissioner has willfully failed to perform the  
5 water commissioner's duties, the water commissioner may be proceeded against for contempt of court, as  
6 provided in contempt cases. The judge shall make an order regarding the payment of costs of the hearing that  
7 the judge determines is just and proper."

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9           NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an  
10 integral part of Title 85, chapter 5, part 1, and the provisions of Title 85, chapter 5, part 1, apply to [section 1].

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12           NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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