

SENATE BILL NO. 304

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE GOVERNOR'S OFFICE

IN THE SENATE

January 27, 1983	Introduced and referred to Committee on State Administration.
February 8, 1983	Committee recommend bill do pass as amended. Report adopted.
February 9, 1983	Bill printed and placed on members' desks.
February 10, 1983	Second reading, do pass.
February 11, 1983	Correctly engrossed.
February 12, 1983	Third reading, passed. Ayes, 45; Noes, 3. Transmitted to House.

IN THE HOUSE

February 14, 1983	Introduced and referred to Committee on State Administration.
March 4, 1983	Committee recommend bill be concurred in. Report adopted.
March 5, 1983	Second reading, concurred in.
March 7, 1983	Third reading, concurred in.

IN THE SENATE

March 8, 1983	Returned to Senate. Sent to enrolling. Reported correctly enrolled.
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SENATE BILL NO. 304

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A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A PERSON APPOINTED TO A PUBLIC OFFICE WHOSE APPOINTMENT IS SUBJECT TO CONFIRMATION BY THE SENATE MAY SERVE AS A DE JURE OFFICER UPON APPOINTMENT, NOTWITHSTANDING THAT THE APPOINTMENT HAS NOT YET BEEN CONFIRMED; AMENDING SECTIONS 2-15-124 AND 2-16-213, MCA."

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

Section 1. Section 2-15-124, MCA, is amended to read:

"2-15-124. Quasi-judicial boards. If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member shall be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term ~~and until their successors are appointed and qualified~~. The remaining

members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term ~~and until their successors are appointed and qualified~~. ~~An incumbent member shall continue to discharge the duties of his office until his successor is appointed~~. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate ~~then meeting in regular session or next meeting in regular session following the appointment~~. ~~However, the governor may appoint a member to assume office before the senate meets at its next regular session to consider the appointment~~. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a

1 vacancy shall serve for the unexpired term to which he is
2 appointed.

3 (5) The governor shall designate the chairman. The
4 chairman may make and second motions and vote.

5 (6) Members may be removed by the governor only for
6 cause.

7 (7) Unless he is a full-time salaried officer or
8 employee of this state or of a political subdivision of this
9 state, each member is entitled to be paid \$25 for each day
10 in which he is actually and necessarily engaged in the
11 performance of board duties, and he is also entitled to be
12 reimbursed for travel expenses, as provided for in 2-18-501
13 through 2-18-503, incurred while in the performance of board
14 duties. Members who are full-time salaried officers or
15 employees of this state or of a political subdivision of
16 this state are not entitled to be compensated for their
17 service as members but are entitled to be reimbursed for
18 travel expenses as provided for in 2-18-501 through
19 2-18-503.

20 (8) A majority of the membership constitutes a quorum
21 to do business. A favorable vote of at least a majority of
22 all members of a board is required to adopt any resolution,
23 motion, or other decision, unless otherwise provided by
24 law."

25 Section 2. Section 2-16-213, MCA, is amended to read:

1 "2-16-213. Term of office — holdover — assumption of
2 office. (1) Every office of which the duration is not fixed
3 by law is held at the pleasure of the appointing power.

4 (2) Every officer must continue to discharge the
5 duties of his office, although his term has expired, until
6 his successor has qualified.

7 (3) Notwithstanding subsection (2), an appointee who
8 is by law subject to confirmation by the senate may, upon
9 expiration of or vacancy in the previous term, assume the
10 office to which appointed and is a de jure officer,
11 notwithstanding the fact that the senate has not yet
12 confirmed the appointment. If the senate rejects the
13 appointment, the office becomes vacant."

-End-

Approved by Committee
on State Administration

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Section 1. Section 2-15-124, MCA, is amended to read:

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(2) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term ~~and--until--their~~

~~successors--are--appointed--and--qualified AND UNTIL THEIR SUCCESSORS ARE APPOINTED.~~ The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term ~~and--until--their--successors--are--appointed--and--qualified AND UNTIL THEIR SUCCESSORS ARE APPOINTED.~~ ~~An incumbent member shall continue to discharge the duties of his office until his successor is appointed.~~ It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate ~~then meeting in regular session or next meeting in regular session following the appointment.~~ However, ~~the governor may appoint a member to assume office before the senate meets at its next regular session--to--consider the appointment.~~ A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid \$25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by

law."

Section 2. Section 2-16-213, MCA, is amended to read:

"2-16-213. Term of office -- holdover == assumption of office. (1) Every office of which the duration is not fixed by law is held at the pleasure of the appointing power.

(2) Every officer must continue to discharge the duties of his office, although his term has expired, until his successor has qualified.

(3) Notwithstanding subsection (2), an appointee who is by law subject to confirmation by the senate may, upon expiration of or vacancy in the previous term, assume the office to which appointed and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate rejects the appointment, the office becomes vacant."

SECTION 3. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

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