

HOUSE BILL NO. 123

INTRODUCED BY BRADLEY, LORY, GIACOMETTO, SPAETH

IN THE HOUSE

JANUARY 9, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

FEBRUARY 14, 1987                 COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 16, 1987                 PRINTING REPORT.

FEBRUARY 17, 1987                 SECOND READING, DO PASS AS AMENDED.  
  
ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.

FEBRUARY 18, 1987                 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 19, 1987                 ENGROSSING REPORT.

FEBRUARY 20, 1987                 THIRD READING, PASSED.  
AYES, 81; NOES, 6.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 21, 1987                 INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

MARCH 12, 1987                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 17, 1987                   SECOND READING, CONCURRED IN.

MARCH 19, 1987                   THIRD READING, CONCURRED IN.  
AYES, 48; NOES, 1.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 25, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

MARCH 27, 1987

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 22, 1987

ON MOTION, CONFERENCE COMMITTEE  
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 22, 1987

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

APRIL 23, 1987

FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 23, 1987

FREE CONFERENCE COMMITTEE REPORTED.

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

SENT TO ENROLLING.

1 H.B. BILL NO. 123  
2 INTRODUCED BY Bradley Tony Dinicola Spaitz

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PARTIES IN A  
5 CIVIL ACTION TO HIRE A RETIRED JUDGE OR QUALIFIED MEMBER OF  
6 THE STATE BAR AS A JUDGE PRO TEMPORE; CLARIFYING THE  
7 AUTHORITY OF A JUDGE PRO TEMPORE; ESTABLISHING  
8 QUALIFICATIONS FOR A JUDGE PRO TEMPORE; MAKING THE PARTIES  
9 TO THE ACTION RESPONSIBLE FOR THE EXPENSES OF TRIAL AND THE  
10 SALARIES OF THE JUDGE AND COURT REPORTER; ESTABLISHING  
11 REQUIREMENTS FOR THE PLACE OF TRIAL, THE KEEPING OF RECORDS,  
12 AND APPEALS; ALLOWING A JUDGE PRO TEMPORE TO PRACTICE LAW,  
13 ADMINISTER ESTATES, AND HAVE A PARTNER WHO PRACTICES LAW;  
14 EXCEPTING A JUDGE PRO TEMPORE FROM THE ELECTION REQUIREMENT;  
15 ALLOWING A RETIRED JUDGE TO RECEIVE RETIREMENT BENEFITS  
16 WHILE ACTING AS A JUDGE PRO TEMPORE; AND AMENDING SECTIONS  
17 3-1-601, 3-1-603, 3-5-113, 3-5-201, AND 19-5-501, MCA."

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Section 1. Section 3-5-113, MCA, is amended to read:  
21 "3-5-113. Judges pro tempore. (1) A civil action in  
22 the district court may be tried by a judge pro tempore, who  
23 must be ~~a member of the bar of the state, agreed upon in~~  
24 ~~writing by the parties, litigant or their attorneys of~~  
25 ~~record, approved by the court,~~ and sworn to try the cause

1 before entering upon his duties.

2 (2) The judge pro tempore has the authority and power  
3 of an elected district court judge in civil actions. All  
4 proceedings before a judge pro tempore must be conducted in  
5 accordance with the rules of evidence and procedure  
6 governing district courts.

7 (2)(3) Any order, judgment, or decree made or rendered  
8 by ~~such the~~ judge pro tempore shall have the same force and  
9 effect as if made or rendered by the district court with the  
10 regular judge presiding."

11 NEW SECTION. Section 2. Qualifications. Any of the  
12 following individuals may act as a judge pro tempore:

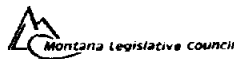
13 (1) a member of the bar of the state who meets the  
14 qualifications for judge of the district court as provided  
15 in 3-5-202;

16 (2) a retired judge of the district court; or

17 (3) a retired justice of the supreme court.

18 NEW SECTION. Section 3. Agreement or appointment --  
19 waiver of jury trial. (1) Prior to trial and upon written  
20 agreement of all the parties to a civil action, a judge pro  
21 tempore may be hired to preside over the whole or any aspect  
22 of the action as if the regular district court judge were  
23 presiding.

24 (2) An agreement for a judge pro tempore constitutes a  
25 waiver of the right to trial by jury by any party having the



1 right.

2 NEW SECTION. Section 4. Compensation -- expenses. (1)  
3 The salary of the judge pro tempore and court reporter and  
4 all other expenses associated with the trial are the  
5 responsibility of the parties to the action. The amount of  
6 salaries and other expenses and the manner of payment must  
7 be established by written agreement.

8 (2) The judge pro tempore may not withhold his  
9 judgment as security for compensation.

10 NEW SECTION. Section 5. Rooms -- records. (1) Each  
11 trial before a judge pro tempore must be conducted in a  
12 suitable room in the courthouse in the judicial district  
13 where the action was filed, unless the parties or their  
14 attorneys stipulate in writing that the trial may be held  
15 elsewhere.

16 (2) All records must be filed and kept in accordance  
17 with the rules governing the district court where the action  
18 was filed.

19 NEW SECTION. Section 6. Appeals. An appeal from a  
20 final judgment of a judge pro tempore must be made in the  
21 same manner as an appeal from a final judgment of the  
22 district court.

23 Section 7. Section 3-1-601, MCA, is amended to read:

24 "3-1-601. Certain officers not to practice law or  
25 administer estates. (1) Except as provided in 3-1-604 and

1 except for a judge pro tempore, no justice or judge of a  
2 court of record or clerk of any court may practice law in  
3 any court in this state or act as attorney, agent, or  
4 solicitor in the prosecution of any claim or application for  
5 lands, pensions, or patent rights or other proceedings  
6 before any department of the state or general government or  
7 any court of the United States during his continuance in  
8 office.

9 (2) Neither the court administrator nor any assistant  
10 may practice law in any of the courts of this state while  
11 holding his position.

12 (3) No justice or judge of a court of record, except a  
13 judge pro tempore, may act as administrator or executor of  
14 any estate for compensation."

15 Section 8. Section 3-1-603, MCA, is amended to read:

16 "3-1-603. No judicial officer of court of record to  
17 have partner practicing law. (1) Except as provided in  
18 subsection (2), no judicial officer of a court of record  
19 may have a partner acting as attorney or counsel in any  
20 court of this state.

21 (2) A partner of either a municipal court judge or a  
22 judge pro tempore may act as attorney or counsel in any  
23 court of this state except the ~~municipal~~ court of his  
24 partner."

25 Section 9. Section 3-5-201, MCA, is amended to read:

1 "3-5-201. Election and oath of office. (1) The judges  
2 of the district court, except judges pro tempore, must be  
3 elected by the qualified voters of the district.

4 (2) Each Except as provided in subsection (1), each  
5 judge of a district court must, as soon as he has taken and  
6 subscribed his official oath, file the same in the office of  
7 the secretary of state."

8 Section 10. Section 19-5-501, MCA, is amended to read:

9 "19-5-501. Eligibility for service retirement. (1) Any  
10 member who has completed at least 5 years or more service  
11 and has reached the age of 65 may retire and receive the  
12 proportional retirement allowances provided in 19-5-502.

13 (2) No retirement allowances may be approved by the  
14 board while the member is drawing full compensation as a  
15 judge or justice. However, allowances may not be withheld  
16 for receiving compensation as a judge pro tempore."

17 NEW SECTION. Section 11. Codification instruction.

18 Sections 2 through 6 are intended to be codified as an  
19 integral part of Title 3, chapter 5, part 1, and the  
20 provisions of Title 3, chapter 5, part 1, apply to sections  
21 2 through 6.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 123

INTRODUCED BY BRADLEY, LORY, GIACOMETTO, SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PARTIES IN A CIVIL ACTION TO HIRE A RETIRED JUDGE OR QUALIFIED MEMBER OF THE STATE BAR AS A JUDGE PRO TEMPORE; CLARIFYING THE AUTHORITY OF A JUDGE PRO TEMPORE; ESTABLISHING QUALIFICATIONS FOR A JUDGE PRO TEMPORE; MAKING THE PARTIES TO THE ACTION RESPONSIBLE FOR THE EXPENSES OF TRIAL AND THE SALARIES OF THE JUDGE AND COURT REPORTER; ESTABLISHING REQUIREMENTS FOR THE PLACE OF TRIAL, THE KEEPING OF RECORDS, AND APPEALS; ALLOWING A JUDGE PRO TEMPORE TO PRACTICE LAW, ADMINISTER ESTATES, AND HAVE A PARTNER WHO PRACTICES LAW; EXCEPTING A JUDGE PRO TEMPORE FROM THE ELECTION REQUIREMENT; ALLOWING A RETIRED JUDGE TO RECEIVE RETIREMENT BENEFITS WHILE ACTING AS A JUDGE PRO TEMPORE; AND AMENDING SECTIONS 3-1-601, 3-1-603, 3-5-113, 3-5-201, AND 19-5-501, MCA."

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before entering upon his duties.

(2) The judge pro tempore has the authority and power of an elected district court judge in civil actions. All proceedings before a judge pro tempore must be conducted in accordance with the rules of evidence and procedure governing district courts.

(3) Any order, judgment, or decree made or rendered by such the judge pro tempore shall have the same force and effect as if made or rendered by the district court with the regular judge presiding."

NEW SECTION. Section 2. Qualifications. Any of the following individuals may act as a judge pro tempore:

~~(1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;~~

(2)(1) a retired judge of the district court; or

(3)(2) a retired justice of the supreme court.

NEW SECTION. Section 3. Agreement or appointment -- waiver of jury trial. (1) Prior to trial and upon written agreement of all the parties to a civil action, a judge pro tempore may be hired to preside over the whole or any aspect of the action as if the regular district court judge were presiding.

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4 solicitor in the prosecution of any claim or application for  
5 lands, pensions, or patent rights or other proceedings  
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 21 the secretary of state."

22 Section 10. Section 19-5-501, MCA, is amended to read:

23 "19-5-501. Eligibility for service retirement. (1) Any  
 24 member who has completed at least 5 years or more service  
 25 and has reached the age of 65 may retire and receive the

1 proportional retirement allowances provided in 19-5-502.

2 (2) No retirement allowances may be approved by the  
 3 board while the member is drawing full compensation as a  
 4 judge or justice. However, allowances may not be withheld  
 5 for receiving compensation as a judge pro tempore."

6 NEW SECTION. Section 11. Codification instruction.  
 7 Sections 2 through 6 are intended to be codified as an  
 8 integral part of Title 3, chapter 5, part 1, and the  
 9 provisions of Title 3, chapter 5, part 1, apply to sections  
 10 2 through 6.

-End-

# STANDING COMMITTEE REPORT

## SENATE

March 11, 1987 19.....

MR. PRESIDENT

We, your committee on.....JUDICIARY.....

having had under consideration.....HOUSE BILL..... No. 123.....

THIRD reading copy ( BLUE )  
color

Hiring retired judges or qualified lawyers ~~xx~~ as temporary judges.  
Bradley (Blaylock)

Respectfully report as follows: That.....HOUSE BILL..... No. 123.....

be amended as follows:

1. Title, line 6.

Following: "BAR"

Insert: "or qualified member of the state bar"

2. Page 2, line 2.

Following: "STATE,"

Insert: "a member of the bar of the state,"

3. Page 2, line 3.

Following: "COURT,"

Insert: ", approved by the court,"

4. Page 2, line 23.

Following: line 22

Insert: "(1) a member of the bar of the state who meets the  
qualifications for judge of the district court as  
provided in 3-5-202;"

Renumber: subsequent subsections

AND AS AMENDED,

BE CONCURRED IN

~~XXXXXXXX~~

~~XXXXXXXXXX~~

*Joe Mazurek*  
.....  
JOE MAZUREK

Chairman.

3-11-87  
29  
5:45

# CONFERENCE COMMITTEE REPORT

Report No. ...One.....

April 23 19 87

MR. SPEAKER

We, your \_\_\_\_\_ Free \_\_\_\_\_ Conference Committee on

House Bill No. 123

met and considered House Bill No. 123 (Reference Copy - Salmon)

We recommend as follows: That the amendments on the attached sheet be adopted.

And that this Conference Committee report be adopted.

FOR THE SENATE

Chet Blaylock  
Sen. Blaylock

Halligan  
Sen. Halligan

Beck  
Sen. Beck

FOR THE HOUSE

MERCER  
Rep. Mercer

Donnelly Bradley  
Rep. Bradley

Vernon H. Keller  
Rep. Keller



1. Title, line 5.

Strike: "HIRE"

Insert: "PETITION FOR THE APPOINTMENT OF"

2. Page 2, line 5.

Strike: "APPROVED"

Insert: "appointed"

Following: "COURT"

Insert: "as provided in [section 3]"

3. Page 3, line 7.

Strike: "or appointment"

Insert: ", petition, and appointment of judge pro tempore"

4. Page 3, line 9.

Following: "action,"

Strike: "a"

Insert: "the parties may petition for the appointment of a judge pro tempore. 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, he may appoint the"

5. Page 3, line 10.

Strike: "may be hired"

Insert: "nominated by the parties"

6. Page 3, line 13.

Strike: "agreement for"

Insert: "appointment of"

7112e/helen\wp

710

HOUSE BILL NO. 123

INTRODUCED BY BRADLEY, LORY, GIACOMETTO, SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PARTIES IN A CIVIL ACTION TO ~~HIRE~~ PETITION FOR THE APPOINTMENT OF A RETIRED JUDGE OR ~~QUALIFIED MEMBER OF THE STATE BAR~~ OR QUALIFIED MEMBER OF THE STATE BAR AS A JUDGE PRO TEMPORE; CLARIFYING THE AUTHORITY OF A JUDGE PRO TEMPORE; ESTABLISHING QUALIFICATIONS FOR A JUDGE PRO TEMPORE; MAKING THE PARTIES TO THE ACTION RESPONSIBLE FOR THE EXPENSES OF TRIAL AND THE SALARIES OF THE JUDGE AND COURT REPORTER; ESTABLISHING REQUIREMENTS FOR THE PLACE OF TRIAL, THE KEEPING OF RECORDS, AND APPEALS; ALLOWING A JUDGE PRO TEMPORE TO PRACTICE LAW, ADMINISTER ESTATES, AND HAVE A PARTNER WHO PRACTICES LAW; EXCEPTING A JUDGE PRO TEMPORE FROM THE ELECTION REQUIREMENT; ALLOWING A RETIRED JUDGE TO RECEIVE RETIREMENT BENEFITS WHILE ACTING AS A JUDGE PRO TEMPORE; AND AMENDING SECTIONS 3-1-601, 3-1-603, 3-5-113, 3-5-201, AND 19-5-501, MCA."

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

Section 1. Section 3-5-113, MCA, is amended to read:

"3-5-113. Judges pro tempore. (1) A civil action in the district court may be tried by a judge pro tempore, who must be ~~a member of the bar of the state,~~ agreed upon in

~~writing by the parties litigant or their attorneys of record, approved by the court, and a member of the bar of the state,~~ A MEMBER OF THE BAR OF THE STATE, AGREED UPON IN WRITING BY THE PARTIES LITIGANT OR THEIR ATTORNEYS OF RECORD, APPROVED BY THE COURT, APPROVED APPOINTED BY THE COURT AS PROVIDED IN [SECTION 3], AND sworn to try the cause before entering upon his duties.

(2) The judge pro tempore has the authority and power of an elected district court judge in THE PARTICULAR civil actions ACTION TRIED IN THE MANNER PROVIDED FOR IN SUBSECTION (1). All proceedings before a judge pro tempore must be conducted in accordance with the rules of evidence and procedure governing district courts.

~~(3)~~ Any order, judgment, or decree made or rendered by such the judge pro tempore shall have the same force and effect as if made or rendered by the district court with the regular judge presiding."

NEW SECTION. Section 2. Qualifications. Any of the following individuals may act as a judge pro tempore:

~~(1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;~~

~~(1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;~~



1       (1) A MEMBER OF THE BAR OF THE STATE WHO MEETS THE  
 2       QUALIFICATIONS FOR JUDGE OF THE DISTRICT COURT AS PROVIDED  
 3       IN 3-5-202;

4       (2)(1)(2)(1)(2) a retired judge of the district court;  
 5       or

6       (3)(2)(3)(2)(3) a retired justice of the supreme  
 7       court.

8       NEW SECTION. Section 3. Agreement or---appointment,  
 9       PETITION, AND APPOINTMENT OF JUDGE PRO TEMPORE -- waiver of  
 10       jury trial. (1) Prior to trial and upon written agreement of  
 11       all the parties to a civil action, a THE PARTIES MAY  
 12       PETITION FOR THE APPOINTMENT OF A JUDGE PRO TEMPORE. IF THE  
 13       DISTRICT COURT JUDGE HAVING JURISDICTION OVER THE CASE WHERE  
 14       THE ACTION WAS FILED FINDS THAT THE APPOINTMENT IS IN THE  
 15       BEST INTEREST OF THE PARTIES AND SERVES JUSTICE, HE MAY  
 16       APPOINT THE judge pro tempore may-be-hired NOMINATED BY THE  
 17       PARTIES to preside over the whole or any aspect of the  
 18       action as if the regular district court judge were  
 19       presiding.

20       (2) An agreement--for APPOINTMENT OF a judge pro  
 21       tempore constitutes a waiver of the right to trial by jury  
 22       by any party having the right.

23       NEW SECTION. Section 4. Compensation -- expenses. (1)  
 24       The salary of the judge pro tempore and court reporter and  
 25       all other expenses associated with the trial are the

1       responsibility of the parties to the action. The amount of  
 2       salaries and other expenses and the manner of payment must  
 3       be established by written agreement.

4       (2) The judge pro tempore may not withhold his  
 5       judgment as security for compensation.

6       NEW SECTION. Section 5. Rooms -- records. (1) Each  
 7       trial before a judge pro tempore must be conducted in a  
 8       suitable room in the courthouse in the judicial district  
 9       where the action was filed, unless the parties or their  
 10       attorneys stipulate in writing that the trial may be held  
 11       elsewhere.

12       (2) All records must be filed and kept in accordance  
 13       with the rules governing the district court where the action  
 14       was filed.

15       NEW SECTION. Section 6. Appeals. An appeal from a  
 16       final judgment of a judge pro tempore must be made in the  
 17       same manner as an appeal from a final judgment of the  
 18       district court.

19       Section 7. Section 3-1-601, MCA, is amended to read:  
 20       "3-1-601. Certain officers not to practice law or  
 21       administer estates. (1) Except as provided in 3-1-604 and  
 22       except for a judge pro tempore, no justice or judge of a  
 23       court of record or clerk of any court may practice law in  
 24       any court in this state or act as attorney, agent, or  
 25       solicitor in the prosecution of any claim or application for

1 lands, pensions, or patent rights or other proceedings  
2 before any department of the state or general government or  
3 any court of the United States during his continuance in  
4 office.

5 (2) Neither the court administrator nor any assistant  
6 may practice law in any of the courts of this state while  
7 holding his position.

8 (3) No justice or judge of a court of record, except a  
9 judge pro tempore, may act as administrator or executor of  
10 any estate for compensation."

11 Section 8. Section 3-1-603, MCA, is amended to read:

12 "3-1-603. No judicial officer of court of record to  
13 have partner practicing law. (1) Except as provided in  
14 subsection (2), no judicial officer of a court of record  
15 may have a partner acting as attorney or counsel in any  
16 court of this state.

17 (2) A partner of either a municipal court judge or a  
18 judge pro tempore may act as attorney or counsel in any  
19 court of this state except the ~~municipal~~ court of his  
20 partner."

21 Section 9. Section 3-5-201, MCA, is amended to read:

22 "3-5-201. Election and oath of office. (1) The judges  
23 of the district court, except judges pro tempore, must be  
24 elected by the qualified voters of the district.

25 (2) Each Except as provided in subsection (1), each

1 judge of a district court must, as soon as he has taken and  
2 subscribed his official oath, file the same in the office of  
3 the secretary of state."

4 Section 10. Section 19-5-501, MCA, is amended to read:

5 "19-5-501. Eligibility for service retirement. (1) Any  
6 member who has completed at least 5 years or more service  
7 and has reached the age of 65 may retire and receive the  
8 proportional retirement allowances provided in 19-5-502.

9 (2) No retirement allowances may be approved by the  
10 board while the member is drawing full compensation as a  
11 judge or justice. However, allowances may not be withheld  
12 for receiving compensation as a judge pro tempore."

13 NEW SECTION. Section 11. Codification instruction.

14 Sections 2 through 6 are intended to be codified as an  
15 integral part of Title 3, chapter 5, part 1, and the  
16 provisions of Title 3, chapter 5, part 1, apply to sections  
17 2 through 6.

-End-