

SENATE BILL NO. 249

INTRODUCED BY

Bishop

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE ELECTED POSITION OF CLERK OF THE SUPREME COURT; REPLACING THE ELECTED OFFICE WITH A CLERK OF THE SUPREME COURT APPOINTED BY THE CHIEF JUSTICE; AMENDING SECTIONS 2-16-111, 2-16-405, 2-16-505, 13-12-207, AND 13-16-504, MCA; REPEALING SECTIONS 3-2-401 AND 3-2-406, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. Section 1. Clerk of supreme court -- appointment. There is an office of clerk of the supreme court. The chief justice shall appoint a clerk of the supreme court. The clerk shall hold office at the pleasure of the court.

Section 2. Section 2-16-111, MCA, is amended to read:

"2-16-111. Residence of officers. (1) The following officers must shall reside and keep their offices at the seat of government: the governor, secretary of state, state auditor, attorney general, superintendent of public instruction, and justices of the supreme court, and clerk of the supreme court.

(2) Restrictions upon the residence of other officers are contained in the chapter or part relating to the respective officers."

Section 3. Section 2-16-405, MCA, is amended to read:

"2-16-405. Salaries of certain elected state officials. The salaries paid to certain elected officials of the state of Montana for fiscal year 1992 and following years are:

	Fiscal Year	Following
	1992	June 30, 1992
Governor	\$54,254	\$55,502
Lieutenant governor	\$39,218	\$40,466
Attorney general	\$49,593	\$50,841

1	State auditor	\$36,278	\$37,526
2	Superintendent of public		
3	instruction	\$42,929	\$44,177
4	Public service commission		
5	<del>chairman</del> <u>presiding officer</u>	\$40,502	\$41,750
6	Public service commissioners,		
7	<del>other than chairman</del>	\$39,218	\$40,466
8	Secretary of state	\$36,278	\$37,526
9	<del>Clerk of the supreme court</del>	<del>\$35,289</del>	<del>\$36,537</del>

10

11 **Section 4.** Section 2-16-505, MCA, is amended to read:

12 **"2-16-505. Filling vacancies in certain elective offices.** A vacancy in the office of ~~either~~ the  
 13 secretary of state, state auditor, attorney general, ~~clerk of the supreme court,~~ or superintendent of public  
 14 instruction must be filled by a person appointed by the governor, ~~who.~~ The appointed person holds his  
 15 office until the first Monday in January next after a general election. At ~~such~~ the election, the office must  
 16 be filled by election for the unexpired term."

17

18 **Section 5.** Section 13-12-207, MCA, is amended to read:

19 **"13-12-207. Order of placement.** (1) The order on the ballot for state and national offices ~~shall be~~  
 20 is as follows:

21 (a) If the election is in a year in which a president of the United States is to be elected, in spaces  
 22 separated from the balance of the party tickets by a heavy black line ~~shall~~ must be the names and spaces  
 23 for voting for candidates for president and vice president. The names of candidates for president and vice  
 24 president for each political party ~~shall~~ must be grouped together.

- 25 (b) United States senator;
- 26 (c) United States representative;
- 27 (d) ~~Governor~~ governor and lieutenant governor;
- 28 (e) ~~Secretary~~ secretary of state;
- 29 (f) ~~Attorney~~ attorney general;
- 30 (g) ~~State~~ state auditor;

- 1 (h) ~~Public~~ public service commissioners;
- 2 (i) ~~State~~ state superintendent of public instruction;
- 3 ~~(j) Clerk of the supreme court;~~
- 4 ~~(k)(j) Chief~~ chief justice of the supreme court;
- 5 ~~(k)(k) Justices~~ justices of the supreme court;
- 6 ~~(m)(l) District~~ district court judges;
- 7 ~~(m)(m) State~~ state senators;
- 8 ~~(n)(n) Members~~ members of the house of representatives.

9 (2) The following order of placement ~~shall~~ must be observed for county offices:

- 10 (a) clerk of the district court;
- 11 (b) county commissioner;
- 12 (c) county clerk and recorder;
- 13 (d) sheriff;
- 14 (e) coroner;
- 15 (f) county attorney;
- 16 (g) county superintendent of schools;
- 17 (h) county auditor;
- 18 (i) public administrator;
- 19 (j) county assessor;
- 20 (k) county treasurer;
- 21 (l) surveyor;
- 22 (m) justice of the peace.

23 (3) The secretary of state shall designate the order for placement on the ballot of any offices not  
 24 on the ~~above~~ lists in subsections (1) and (2), except that the election administrator shall designate the order  
 25 of placement for municipal, charter, consolidated, or confederated local government offices and district  
 26 offices when the district is part of only one county.

27 (4) Constitutional amendments ~~shall~~ must be placed before statewide referendum and initiative  
 28 measures. Ballot issues for a county, municipality, school district, or other political subdivision ~~shall~~ must  
 29 follow statewide measures in the order designated by the election administrator.

30 (5) If any offices are not to be elected, they ~~shall~~ may not be listed, but the order of the offices to

1 be filled ~~shall~~ must be maintained.

2 (6) If there is a short-term and a long-term election for the same office, the long-term office ~~shall~~  
3 must precede the short-term office."

4

5 **Section 6.** Section 13-16-504, MCA, is amended to read:

6 "13-16-504. **Tie vote in election for state executive officers.** If there is a tie vote for governor and  
7 lieutenant governor, secretary of state, attorney general, state auditor, ~~clerk of the supreme court,~~  
8 superintendent of public instruction, or any other state executive officer, the secretary of state shall  
9 transmit a certified copy of the statement to the legislature, showing the votes cast for the two or more  
10 candidates having an equal and the highest number of votes. The legislature, at its next regular session,  
11 shall elect one of these candidates to fill the office by joint ballot of the two houses."

12

13 NEW SECTION. **Section 7. Repealer.** Sections 3-2-401 and 3-2-406, MCA, are repealed.

14

15 NEW SECTION. **Section 8. Codification instruction.** [Section 1] is intended to be codified as an  
16 integral part of Title 3, chapter 2, part 4, and the provisions of Title 3, chapter 2, part 4, apply to [section  
17 1].

18

19 NEW SECTION. **Section 9. Effective date.** [This act] is effective January 1, 1996.

20

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0249, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill eliminating the elected position of Clerk of the Supreme Court; replacing the elected office with a clerk of the Supreme Court appointed by the chief justice.

ASSUMPTIONS:

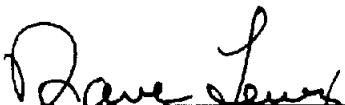
1. The Supreme Court case filings will continue at current trends.
2. The bill is effective January 1, 1996. Estimated expense reductions apply to only six months of FY96.
3. The present 1.00 FTE Clerk of Court and the present 1.00 FTE deputy clerk of court position will be eliminated or reclassified. A 1.00 FTE clerk supervisor position will be established at a lower salary than the present Clerk of Court and the present deputy clerk of court. The net effect will be a reduction of 0.50 FTE in FY96 and 1.00 FTE in FY97.
4. The 2.00 FTE clerk positions in the Clerk of Court's office will be retained with a slightly lower salary level for one of the FTE.
5. Various Montana Supreme Court decisions indicate that the Office of the Clerk of the Supreme Court can be eliminated by the legislature at any time.

FISCAL IMPACT:

Clerk of Court:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	(0.50)	(1.00)
Personal Services	(29,376)	(58,951)
<u>Funding:</u>		
General Fund (01)	(29,376)	(58,951)

 2-1-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2-1-95  
AL BISHOP, PRIMARY SPONSOR      DATE

Fiscal Note for SB0249, as introduced

**SB 249**

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(2) Restrictions upon the residence of other officers are contained in the chapter or part relating to the respective officers."

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 18 office until the first Monday in January next after a general election. At ~~such~~ the election, the office must  
 19 be filled by election for the unexpired term."

20

21 **SECTION 4. SECTION 3-1-202, MCA, IS AMENDED TO READ:**

22 **"3-1-202. Seal of supreme court.** The seal of the supreme court is circular in form and not less  
 23 than 1 3/4 inches in diameter, on which are engraved the words "Supreme Court, State of Montana", with  
 24 the word "Seal" in the center ~~thereof of the words,~~ which The seal must be procured by the ~~clerk of the~~  
 25 supreme court at the expense of the state, and an impression ~~thereof of the seal,~~ certified to by the ~~clerk~~  
 26 court, must be filed with the secretary of state."

27

28 **SECTION 5. SECTION 3-1-1007, MCA, IS AMENDED TO READ:**

29 **"3-1-1007. Commission to make rules -- confidentiality of proceedings.** (1) The commission shall  
 30 adopt and publish rules:

1 (a) for the conduct of its affairs and the format of reports filed under 3-1-1010;

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

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

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

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

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

11 (4) The proceedings of the commission and the related documents ~~shall~~ must be open to the public  
12 except when the demands of individual privacy clearly exceed the merits of public disclosure."  
13

14 **SECTION 6. SECTION 3-2-304, MCA, IS AMENDED TO READ:**

15 **"3-2-304. Physical facilities.** (1) If proper rooms in which to hold the court and for the  
16 accommodation of the officers ~~thereof~~ of the court are not provided by the state, together with attendants,  
17 furniture, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court or  
18 a majority ~~thereof~~ of the court may direct ~~the clerk of the~~ supreme court administrator to provide ~~such~~ the  
19 rooms, attendants, furniture, lights, fuel, and stationery.

20 (2) The expenses ~~thereof~~ referred to in subsection (1), certified by any two justices to be correct,  
21 must be paid only out of ~~the state treasury only~~ out of funds in the state treasury appropriated to the  
22 supreme court."  
23

24 **SECTION 7. SECTION 3-2-402, MCA, IS AMENDED TO READ:**

25 **"3-2-402. Duties.** It is the duty of the ~~clerk~~ supreme court administrator to:

26 (1) keep the seal of the supreme court, its records and files, and the roll of attorneys and counselors  
27 at law;

28 (2) adjourn the court from day to day at the beginning of any term in the absence of any justice  
29 and until the arrival of a majority of the justices;

30 (3) file all papers or transcripts required by law to be filed;



- 1 (4) issue writs and certificates and approve bonds or undertakings when ~~so~~ required;
- 2 (5) make out all transcripts to the supreme court of the United States;
- 3 (6) make copies of papers or records when demanded by law or the rules of the court; and
- 4 (7) perform ~~such~~ other duties as may be required ~~of him~~ by law and the rules and practice of the
- 5 supreme court."

6

7 **SECTION 8. SECTION 3-2-403, MCA, IS AMENDED TO READ:**

8 **"3-2-403. Fees.** The ~~clerk~~ supreme court administrator ~~must~~ shall collect the following fees:

- 9 (1) for filing the transcript on appeal in any civil case appealed to the supreme court, \$75 payable
- 10 by the appellant as payment in full for all services rendered in the case up to the remittitur to the court
- 11 below;
- 12 (2) for filing a petition for any writ, \$75, as payment in full for all services rendered in the cause;
- 13 (3) for a certificate of good standing as an attorney, \$5;
- 14 (4) for preparing copies of documents on file, 15 cents per page;
- 15 (5) for each certified copy under seal, \$1."

16

17 **Section 9.** Section 13-12-207, MCA, is amended to read:

18 **"13-12-207. Order of placement.** (1) The order on the ballot for state and national offices ~~shall be~~

19 is as follows:

20 (a) If the election is in a year in which a president of the United States is to be elected, in spaces

21 separated from the balance of the party tickets by a heavy black line ~~shall~~ must be the names and spaces

22 for voting for candidates for president and vice president. The names of candidates for president and vice

23 president for each political party ~~shall~~ must be grouped together.

- 24 (b) United States senator;
- 25 (c) United States representative;
- 26 (d) ~~Governor~~ governor and lieutenant governor;
- 27 (e) ~~Secretary~~ secretary of state;
- 28 (f) ~~Attorney~~ attorney general;
- 29 (g) ~~State~~ state auditor;
- 30 (h) ~~Public~~ public service commissioners;

- 1 (i) ~~State~~ state superintendent of public instruction;
- 2 (j) ~~Clerk of the supreme court;~~
- 3 ~~(k)(j)~~ Chief chief justice of the supreme court;
- 4 ~~(k)~~ Justices justices of the supreme court;
- 5 ~~(m)(l)~~ District district court judges;
- 6 ~~(n)(m)~~ State state senators;
- 7 ~~(n)~~ Members members of the house of representatives.
- 8 (2) The following order of placement ~~shall~~ must be observed for county offices:
- 9 (a) clerk of the district court;
- 10 (b) county commissioner;
- 11 (c) county clerk and recorder;
- 12 (d) sheriff;
- 13 (e) coroner;
- 14 (f) county attorney;
- 15 (g) county superintendent of schools;
- 16 (h) county auditor;
- 17 (i) public administrator;
- 18 (j) county assessor;
- 19 (k) county treasurer;
- 20 (l) surveyor;
- 21 (m) justice of the peace.

22 (3) The secretary of state shall designate the order for placement on the ballot of any offices not  
 23 on the ~~above~~ lists in subsections (1) and (2), except that the election administrator shall designate the order  
 24 of placement for municipal, charter, consolidated, or confederated local government offices and district  
 25 offices when the district is part of only one county.

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 27 measures. Ballot issues for a county, municipality, school district, or other political subdivision ~~shall~~ must  
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29 (5) If any offices are not to be elected, they ~~shall~~ may not be listed, but the order of the offices to  
 30 be filled ~~shall~~ must be maintained.

1 (6) If there is a short-term and a long-term election for the same office, the long-term office ~~shall~~  
 2 must precede the short-term office."

3  
 4 **Section 10.** Section 13-16-504, MCA, is amended to read:

5 "13-16-504. **Tie vote in election for state executive officers.** If there is a tie vote for governor and  
 6 lieutenant governor, secretary of state, attorney general, state auditor, ~~clerk of the supreme court,~~  
 7 superintendent of public instruction, or any other state executive officer, the secretary of state shall  
 8 transmit a certified copy of the statement to the legislature, showing the votes cast for the two or more  
 9 candidates having an equal and the highest number of votes. The legislature, at its next regular session,  
 10 shall elect one of these candidates to fill the office by joint ballot of the two houses."

11  
 12 **SECTION 11. SECTION 19-5-404, MCA, IS AMENDED TO READ:**

13 "19-5-404. **Contributions by state.** (1) The state of Montana shall contribute monthly to the  
 14 pension trust fund a sum equal to 6% of the compensation of each member. In addition, the clerk of each  
 15 district court shall transmit 68% of certain filing fees as required under 25-1-201(2) and that portion of the  
 16 fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in  
 17 25-1-201(4) and (6) to the state, which shall first deposit in the pension trust fund an amount equal to  
 18 34.71% of the total compensation paid to district judges and supreme court justices who are covered by  
 19 the judges' retirement system and then deposit the balance in the state general fund. The ~~clerk of the~~  
 20 supreme court administrator shall pay one-fourth of the fees collected under 3-2-403 to the division to be  
 21 credited to the pension trust fund.

22 (2) The state of Montana shall contribute monthly from the renewable resource grant and loan  
 23 program account in the state special revenue fund to the judges' pension trust fund an amount equal to  
 24 34.71% of the compensation paid to the chief water court judge."

25  
 26 **SECTION 12. SECTION 27-26-303, MCA, IS AMENDED TO READ:**

27 "27-26-303. **Jury trial.** (1) If an answer is made ~~which~~ that raises a question as to a matter of fact  
 28 essential to the determination of the motion and affecting the substantial rights of the parties, and upon  
 29 the supposed truth of the allegation of which the application for the writ is based, the court or judge may,  
 30 ~~in its or his discretion,~~ order the question to be tried before a jury and postpone the argument until the trial

1 can be ~~had~~ held. The question to be tried must be distinctly stated in the order for trial. The order may  
 2 also direct the jury to assess any damages ~~which~~ that the applicant may have sustained if it finds for ~~him~~  
 3 the applicant.

4 (2) If the proceeding is in the district court or before a district judge, the trial must take place as  
 5 in other cases. If a jury is required in the supreme court, a jury must be drawn and selected from the jury  
 6 box of Lewis and Clark County and the clerk of the district court of that county shall place the box in the  
 7 custody of the ~~clerk of the~~ supreme court for that purpose. The conduct of the trial must be the same as  
 8 in the district court, and the ~~clerk of the~~ supreme court administrator has the same authority to issue  
 9 process and enter orders and judgments as the district court clerk has in ~~like~~ similar cases."

10

11 **SECTION 13. SECTION 27-28-207, MCA, IS AMENDED TO READ:**

12 **"27-28-207. Procedure when action brought in supreme court.** Actions under this chapter  
 13 commenced in the supreme court must be conducted in the same manner as if commenced in the district  
 14 court, and the ~~clerk of the~~ supreme court administrator has the same authority to issue summons and other  
 15 process and to enter orders and judgments as the clerk of the district court has in ~~like~~ similar cases. All  
 16 pleadings and the conduct of the trial must be the same as in the district court. If a jury is required to  
 17 determine an issue of fact, a jury must be drawn and selected from the jury box of Lewis and Clark County  
 18 and the clerk of the district court of that county shall place the jury box in the custody of the ~~clerk of the~~  
 19 supreme court for that purpose."

20

21 **SECTION 14. SECTION 37-61-205, MCA, IS AMENDED TO READ:**

22 **"37-61-205. Application and examination fees.** (1) ~~Every~~ Each applicant for admission to the bar  
 23 shall pay to the state bar of Montana, at the time the applicant files an application for admission to the bar,  
 24 an application fee commensurate with the cost of processing the application as determined by the supreme  
 25 court.

26 (2) In addition to the fee provided for in subsection (1), the supreme court may charge an  
 27 examination fee commensurate with the cost of administering the bar examination. The examination fee  
 28 must be paid to the ~~clerk of the~~ supreme court administrator when the applicant files the application for  
 29 admission to the bar.

30 (3) All money collected and spent from fees provided for in subsection (1) must be accounted for

1 annually in a report by the state bar of Montana to the supreme court. The report must provide details of  
 2 fees collected and categories of expenditures for processing applications and must be in a form satisfactory  
 3 to the supreme court. All money collected from fees provided for in subsection (2) must be deposited ~~with~~  
 4 ~~the state treasurer by the clerk of the supreme court and placed~~ in the state general fund."

5  
 6 **SECTION 15. SECTION 37-61-206, MCA, IS AMENDED TO READ:**

7 "37-61-206. **Certificate of admission and license.** If upon examination ~~he~~ an applicant is found to  
 8 be qualified, the supreme court ~~must~~ shall admit ~~him~~ the applicant as an attorney and counselor in all the  
 9 courts of this state and ~~must~~ shall direct an order to be entered to that effect upon its records, ~~and~~ The  
 10 court shall direct that a certificate of ~~such~~ the record be given to ~~him~~ the applicant by the ~~clerk of the~~  
 11 supreme court administrator. ~~which~~ The certificate is ~~his~~ the license."

12  
 13 **SECTION 16. SECTION 37-61-209, MCA, IS AMENDED TO READ:**

14 "37-61-209. **Roll of attorneys.** The ~~clerk of the~~ supreme court administrator ~~must~~ shall keep a roll  
 15 of the attorneys and counselors admitted to practice, ~~which~~ The roll must be signed by the person  
 16 admitted before ~~he~~ the person receives ~~his~~ a license."

17  
 18 **SECTION 17. SECTION 37-61-211, MCA, IS AMENDED TO READ:**

19 "37-61-211. **Annual license tax -- municipal tax prohibited.** (1) ~~Every~~ Each attorney or counselor  
 20 at law admitted by the supreme court of the state to practice ~~his profession~~ within the state is required to  
 21 pay a license tax of \$25 a year. The tax is payable to and collected by the ~~clerk of the~~ supreme court  
 22 administrator on or before April 1 of each year.

23 (2) Upon the payment of the tax, the ~~clerk~~ administrator shall issue and deliver a certificate to the  
 24 person paying the tax, certifying to the payment of the license tax and stating the period covered by the  
 25 payment.

26 (3) A license tax may not be imposed upon attorneys by a municipality or any other subdivision of  
 27 the state."

28  
 29 **SECTION 18. SECTION 37-61-212, MCA, IS AMENDED TO READ:**

30 "37-61-212. **Collection of delinquent license tax.** If any practicing attorney or counselor at law

1 ~~shall fail, neglect, or refuse~~ fails, neglects, or refuses to pay to the ~~clerk of the~~ supreme court administrator  
 2 the license tax imposed by this chapter for a period of 30 days after the ~~same tax~~ tax is due and payable, it  
 3 ~~shall be the duty of the clerk of the~~ supreme court administrator shall ~~to take such~~ action for the collection  
 4 of the ~~same tax.~~ as is The action must be the same as required of the county treasurer in cases of  
 5 nonpayment of other ~~licenses~~ license taxes, as provided by 7-21-2116, and the provisions of 7-21-2115  
 6 through 7-21-2117 ~~shall control in said the proceedings so~~ as far as the same they are applicable ~~thereto.~~"

7

8 **SECTION 19. SECTION 37-61-213, MCA, IS AMENDED TO READ:**

9 "37-61-213. **Disposition of license tax.** All ~~moneys so~~ money collected from license taxes during  
 10 any month ~~shall~~ must, on or before the first day of the succeeding month, be delivered to and deposited  
 11 with the state treasurer ~~by the clerk of the supreme court,~~ and the The state treasurer shall deposit ~~such~~  
 12 ~~moneys~~ the money in the general fund."

13

14 **SECTION 20. SECTION 39-30-103, MCA, IS AMENDED TO READ:**

15 "39-30-103. **Definitions.** For the purposes of this chapter, the following definitions apply:

16 (1) "Eligible spouse" means the spouse of a handicapped person who is determined by the  
 17 department of social and rehabilitation services to have a 100% disability and who is unable to use ~~his~~ the  
 18 employment preference because of ~~his~~ the person's disability.

19 (2) "Handicapped person" means an individual certified by the department of social and  
 20 rehabilitation services to have a physical or mental impairment that substantially limits one or more major  
 21 life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability  
 22 to obtain, retain, or advance in employment.

23 (3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the  
 24 ranks of the current employees of:

25 (i) a department, as defined in 2-15-102, for a position within the executive branch;

26 (ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the  
 27 legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the  
 28 legislative branch;

29 (iii) a judicial agency, such as the office of supreme court administrator, ~~office of supreme court~~  
 30 ~~clerk,~~ state law library, or similar office in a state district court for a position within the judicial branch;

1 (iv) a city or town for a municipal position, including a city or municipal court position; and

2 (v) a county for a county position, including a justice's court position.

3 (b) A personnel action limited to current employees of a specific public entity identified in  
4 subsections (a)(i) through (a)(v) of this subsection (3), current employees in a reduction-in-force pool who  
5 have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this  
6 subsection (3), or current participants in a federally authorized employment program is not an initial hiring.

7 (4) (a) "Mental impairment" means:

8 (i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or  
9 any other neurologically handicapping condition closely related to mental retardation and requiring treatment  
10 similar to that required by mentally retarded individuals; or

11 (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive  
12 or volitional functions.

13 (b) The term mental impairment does not include alcoholism or drug addiction and does not include  
14 any mental impairment, disease, or defect that has been asserted by the individual claiming the preference  
15 as a defense to any criminal charge.

16 (5) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position  
17 or a similar permanent or seasonal position with a public employer other than the state. However, the term  
18 does not include:

19 (a) a temporary position as defined in 2-18-101 for a state position or similar temporary position  
20 with a public employer other than the state;

21 (b) a state or local elected official;

22 (c) employment as an elected official's immediate secretary, legal advisor, court reporter, or  
23 administrative, legislative, or other immediate or first-line aide;

24 (d) appointment by an elected official to a body such as a board, commission, committee, or  
25 council;

26 (e) appointment by an elected official to a public office if the appointment is provided for by law;

27 (f) a department head appointment by the governor or an executive department head appointment  
28 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local  
29 government; or

30 (g) engagement as an independent contractor or employment by an independent contractor.

1 (6) (a) "Public employer" means:

2 (i) any department, office, board, bureau, commission, agency, or other instrumentality of the  
3 executive, judicial, or legislative branch of the government of the state of Montana; and

4 (ii) any county, city, or town.

5 (b) The term does not include a school district, a vocational-technical center or program, a  
6 community college, the board of regents of higher education, the Montana university system, a special  
7 purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

8 (7) "Substantially equal qualifications" means the qualifications of two or more persons among  
9 whom the public employer cannot make a reasonable determination that the qualifications held by one  
10 person are significantly better suited for the position than the qualifications held by the other persons."

11

12 **SECTION 21. SECTION 46-18-604, MCA, IS AMENDED TO READ:**

13 **"46-18-604. Transmittal of sentencing data to supreme court -- compilation.** (1) Except as  
14 provided in subsection (2), the clerk of district court shall record on forms provided by the ~~clerk of the~~  
15 supreme court administrator the following sentencing data for each defendant sentenced:

16 (a) the name of the case;

17 (b) whether the conviction was by verdict or plea;

18 (c) the fine or imprisonment, or both, allowed by law;

19 (d) the actual fine or imprisonment, or both, imposed;

20 (e) the percentage of fine or imprisonment, or both, allowed by law that is actually imposed;

21 (f) the amount of fine or number of years of imprisonment, or both, that are suspended; and

22 (g) the percentage of fine or imprisonment, or both, imposed that is suspended.

23 (2) Whenever a sentence of death or of life imprisonment is allowed by law, this fact must be  
24 shown in the report, together with the case name and the actual sentence imposed.

25 (3) The clerk of district court shall report the names of the cases in which sentencing was deferred.

26 (4) The clerk of district court shall report the reasons given by the judge for the disposition of every  
27 case by attaching an extract of that portion of the judgment setting forth the basis for the sentence.

28 (5) The sentencing judge shall sign the form containing the information recorded by the clerk of  
29 district court pursuant to this section.

30 (6) The clerk of district court shall, on a quarterly basis, total for each judge the data recorded



1 pursuant to subsections (1) and (2), sign the report, and forward ~~all such~~ the data to the ~~clerk of the~~  
2 supreme court administrator.

3 (7) The ~~clerk of the~~ supreme court administrator shall compile the reports submitted by the district  
4 court clerks and distribute the data to all district court clerks and any interested party on April 1 of each  
5 year.

6 (8) The ~~clerk of the~~ supreme court administrator shall provide a form for the recording of data  
7 required by this section."  
8

9 **SECTION 22. SECTION 46-18-901, MCA, IS AMENDED TO READ:**

10 **"46-18-901. Review division of the supreme court for review of sentences.** (1) The chief justice  
11 of the supreme court of Montana shall appoint three district court judges to act as a review division of the  
12 supreme court and shall designate one of ~~such~~ the judges to act as ~~chairman thereof~~ presiding judge. The  
13 ~~clerk of the Montana~~ supreme court administrator shall record ~~such appointment~~ the appointments and ~~shall~~  
14 give notice ~~thereof~~ of the appointments to the clerk of every district court.

15 (2) This review division shall meet at least four times a year or more as its business requires, as  
16 determined by the ~~chairman~~ presiding judge. The review division shall hold its meetings at Deer Lodge.

17 (3) The decision of any two of ~~such~~ the judges ~~shall be~~ is sufficient to determine any matter before  
18 the review division.

19 (4) The review division may adopt any rules ~~which~~ that will expedite its review of sentences. The  
20 division ~~is also authorized to~~ may appoint a secretary and ~~such~~ clerical help as it ~~deems~~ considers adequate  
21 and fix their compensation."  
22

23 **SECTION 23. SECTION 46-20-706, MCA, IS AMENDED TO READ:**

24 **"46-20-706. Termination of appeal -- remand.** (1) Upon termination of the appeal, the supreme  
25 court shall remand the cause with proper instruction, together with the opinion of the court. The ~~clerk~~  
26 court shall return all original documents to the trial court.

27 (2) After the cause has been remanded to the trial court, the appellate court has no further  
28 jurisdiction of the appeal or the proceedings ~~thereon~~ and all orders necessary to carry the judgment into  
29 effect must be made by the court to which the cause is remanded."  
30



## 1 SENATE BILL NO. 249

2 INTRODUCED BY BISHOP

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE ELECTED POSITION OF CLERK OF THE  
 5 SUPREME COURT; ~~REPLACING THE ELECTED OFFICE WITH A CLERK OF THE SUPREME COURT~~  
 6 ~~APPOINTED BY THE CHIEF JUSTICE; TRANSFERRING CERTAIN FUNCTIONS TO THE SUPREME COURT~~  
 7 ~~ADMINISTRATOR; AMENDING SECTIONS 2-16-111, 2-16-405, 2-16-505, 3-1-202, 3-1-1007, 3-2-304,~~  
 8 ~~3-2-402, 3-2-403, 13-12-207, AND 13-16-504, 19-5-404, 27-26-303, 27-28-207, 37-61-205, 37-61-206,~~  
 9 ~~37-61-209, 37-61-211, 37-61-212, 37-61-213, 39-30-103, 46-18-604, 46-18-901, AND 46-20-706,~~  
 10 MCA; REPEALING SECTIONS 3-2-401 AND 3-2-406, MCA; AND PROVIDING A ~~DELAYED~~ EFFECTIVE DATE  
 11 DATES."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14  
 15 ~~NEW SECTION. Section 1. Clerk of supreme court appointment.~~ There is an office of clerk of  
 16 the supreme court. The chief justice shall appoint a clerk of the supreme court. The clerk shall hold office  
 17 at the pleasure of the court.

18  
 19 **Section 1.** Section 2-16-111, MCA, is amended to read:

20 "2-16-111. **Residence of officers.** (1) The following officers ~~must~~ shall reside and keep their offices  
 21 at the seat of government: the governor, secretary of state, state auditor, attorney general, superintendent  
 22 of public instruction, and justices of the supreme court, ~~and clerk of the supreme court.~~

23 (2) Restrictions upon the residence of other officers are contained in the chapter or part relating  
 24 to the respective officers."

25  
 26 **Section 2.** Section 2-16-405, MCA, is amended to read:

27 "2-16-405. **Salaries of certain elected state officials.** The salaries paid to certain elected officials  
 28 of the state of Montana for fiscal year 1992 and following years are:

Fiscal Year	Following
1992	June 30, 1992

1	Governor	\$54,254	\$55,502
2	Lieutenant governor	\$39,218	\$40,466
3	Attorney general	\$49,593	\$50,841
4	State auditor	\$36,278	\$37,526
5	Superintendent of public		
6	instruction	\$42,929	\$44,177
7	Public service commission		
8	<del>chairman</del> <u>presiding officer</u>	\$40,502	\$41,750
9	Public service commissioners,		
10	<del>other than chairman</del>	\$39,218	\$40,466
11	Secretary of state	\$36,278	\$37,526
12	<del>Clerk of the supreme court</del>	<del>\$35,289</del>	<del>\$36,537</del>

13

14 **Section 3.** Section 2-16-505, MCA, is amended to read:

15 **"2-16-505. Filling vacancies in certain elective offices.** A vacancy in the office of either the  
 16 secretary of state, state auditor, attorney general, ~~clerk of the supreme court,~~ or superintendent of public  
 17 instruction must be filled by a person appointed by the governor, ~~who.~~ The appointed person holds his  
 18 office until the first Monday in January next after a general election. At ~~such~~ the election, the office must  
 19 be filled by election for the unexpired term."

20

21 **SECTION 4. SECTION 3-1-202, MCA, IS AMENDED TO READ:**

22 **"3-1-202. Seal of supreme court.** The seal of the supreme court is circular in form and not less  
 23 than 1 3/4 inches in diameter, on which are engraved the words "Supreme Court, State of Montana", with  
 24 the word "Seal" in the center ~~thereof of the words,~~ which The seal must be procured by the ~~clerk of the~~  
 25 supreme court at the expense of the state, ~~and an impression thereof of the seal,~~ certified to by the ~~clerk~~  
 26 court, must be filed with the secretary of state."

27

28 **SECTION 5. SECTION 3-1-1007, MCA, IS AMENDED TO READ:**

29 **"3-1-1007. Commission to make rules -- confidentiality of proceedings.** (1) The commission shall  
 30 adopt and publish rules:

1 (a) for the conduct of its affairs and the format of reports filed under 3-1-1010;

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

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

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

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

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

11 (4) The proceedings of the commission and the related documents ~~shall~~ must be open to the public  
12 except when the demands of individual privacy clearly exceed the merits of public disclosure."  
13

14 **SECTION 6. SECTION 3-2-304, MCA, IS AMENDED TO READ:**

15 "3-2-304. **Physical facilities.** (1) If proper rooms in which to hold the court and for the  
16 accommodation of the officers ~~thereof of the court~~ are not provided by the state, together with attendants,  
17 furniture, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court or  
18 a majority ~~thereof of the court~~ may direct ~~the clerk of the supreme court~~ administrator to provide ~~such the~~  
19 rooms, attendants, furniture, lights, fuel, and stationery.

20 (2) The expenses ~~thereof referred to in subsection (1),~~ certified by any two justices to be correct,  
21 must be paid only out of ~~the state treasury only out of~~ funds in the state treasury appropriated to the  
22 supreme court."  
23

24 **SECTION 7. SECTION 3-2-402, MCA, IS AMENDED TO READ:**

25 "3-2-402. **Duties.** It is the duty of the ~~clerk~~ supreme court administrator to:

26 (1) keep the seal of the supreme court, its records and files, and the roll of attorneys and counselors  
27 at law;

28 (2) adjourn the court from day to day at the beginning of any term in the absence of any justice  
29 and until the arrival of a majority of the justices;

30 (3) file all papers or transcripts required by law to be filed;

- 1 (4) issue writs and certificates and approve bonds or undertakings when ~~so~~ required;
- 2 (5) make out all transcripts to the supreme court of the United States;
- 3 (6) make copies of papers or records when demanded by law or the rules of the court; and
- 4 (7) perform ~~such~~ other duties as may be required ~~of him~~ by law and the rules and practice of the
- 5 supreme court."

6

7 **SECTION 8. SECTION 3-2-403, MCA, IS AMENDED TO READ:**

8 "3-2-403. Fees. The ~~clerk~~ supreme court administrator ~~must~~ shall collect the following fees:

- 9 (1) for filing the transcript on appeal in any civil case appealed to the supreme court, \$75 payable
- 10 by the appellant as payment in full for all services rendered in the case up to the remittitur to the court
- 11 below;
- 12 (2) for filing a petition for any writ, \$75, as payment in full for all services rendered in the cause;
- 13 (3) for a certificate of good standing as an attorney, \$5;
- 14 (4) for preparing copies of documents on file, 15 cents per page;
- 15 (5) for each certified copy under seal, \$1."

16

17 **Section 9. Section 13-12-207, MCA, is amended to read:**

18 "13-12-207. Order of placement. (1) The order on the ballot for state and national offices ~~shall be~~

19 is as follows:

20 (a) If the election is in a year in which a president of the United States is to be elected, in spaces

21 separated from the balance of the party tickets by a heavy black line ~~shall~~ must be the names and spaces

22 for voting for candidates for president and vice president. The names of candidates for president and vice

23 president for each political party ~~shall~~ must be grouped together.

- 24 (b) United States senator;
- 25 (c) United States representative;
- 26 (d) ~~Governor~~ governor and lieutenant governor;
- 27 (e) ~~Secretary~~ secretary of state;
- 28 (f) ~~Attorney~~ attorney general;
- 29 (g) ~~State~~ state auditor;
- 30 (h) ~~Public~~ public service commissioners;

- 1 (i) ~~State~~ state superintendent of public instruction;
- 2 ~~(j) Clerk of the supreme court;~~
- 3 ~~(k)(j) Chief~~ chief justice of the supreme court;
- 4 ~~(l)(k) Justices~~ justices of the supreme court;
- 5 ~~(m)(l) District~~ district court judges;
- 6 ~~(n)(m) State~~ state senators;
- 7 ~~(o)(n) Members~~ members of the house of representatives.

8 (2) The following order of placement ~~shall~~ must be observed for county offices:

- 9 (a) clerk of the district court;
- 10 (b) county commissioner;
- 11 (c) county clerk and recorder;
- 12 (d) sheriff;
- 13 (e) coroner;
- 14 (f) county attorney;
- 15 (g) county superintendent of schools;
- 16 (h) county auditor;
- 17 (i) public administrator;
- 18 (j) county assessor;
- 19 (k) county treasurer;
- 20 (l) surveyor;
- 21 (m) justice of the peace.

22 (3) The secretary of state shall designate the order for placement on the ballot of any offices not  
 23 on the ~~above~~ lists in subsections (1) and (2), except that the election administrator shall designate the order  
 24 of placement for municipal, charter, consolidated, or confederated local government offices and district  
 25 offices when the district is part of only one county.

26 (4) Constitutional amendments ~~shall~~ must be placed before statewide referendum and initiative  
 27 measures. Ballot issues for a county, municipality, school district, or other political subdivision ~~shall~~ must  
 28 follow statewide measures in the order designated by the election administrator.

29 (5) If any offices are not to be elected, they ~~shall~~ may not be listed, but the order of the offices to  
 30 be filled ~~shall~~ must be maintained.

1 (6) If there is a short-term and a long-term election for the same office, the long-term office shall  
2 must precede the short-term office."

3  
4 **Section 10.** Section 13-16-504, MCA, is amended to read:

5 "13-16-504. **Tie vote in election for state executive officers.** If there is a tie vote for governor and  
6 lieutenant governor, secretary of state, attorney general, state auditor, ~~clerk of the supreme court,~~  
7 superintendent of public instruction, or any other state executive officer, the secretary of state shall  
8 transmit a certified copy of the statement to the legislature, showing the votes cast for the two or more  
9 candidates having an equal and the highest number of votes. The legislature, at its next regular session,  
10 shall elect one of these candidates to fill the office by joint ballot of the two houses."

11  
12 **SECTION 11. SECTION 19-5-404, MCA, IS AMENDED TO READ:**

13 "19-5-404. **Contributions by state.** (1) The state of Montana shall contribute monthly to the  
14 pension trust fund a sum equal to 6% of the compensation of each member. In addition, the clerk of each  
15 district court shall transmit 68% of certain filing fees as required under 25-1-201(2) and that portion of the  
16 fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in  
17 25-1-201(4) and (6) to the state, which shall first deposit in the pension trust fund an amount equal to  
18 34.71% of the total compensation paid to district judges and supreme court justices who are covered by  
19 the judges' retirement system and then deposit the balance in the state general fund. ~~The clerk of the~~  
20 supreme court administrator shall pay one-fourth of the fees collected under 3-2-403 to the division to be  
21 credited to the pension trust fund.

22 (2) The state of Montana shall contribute monthly from the renewable resource grant and loan  
23 program account in the state special revenue fund to the judges' pension trust fund an amount equal to  
24 34.71% of the compensation paid to the chief water court judge."

25  
26 **SECTION 12. SECTION 27-26-303, MCA, IS AMENDED TO READ:**

27 "27-26-303. **Jury trial.** (1) If an answer is made ~~which~~ that raises a question as to a matter of fact  
28 essential to the determination of the motion and affecting the substantial rights of the parties, and upon  
29 the supposed truth of the allegation of which the application for the writ is based, the court or judge may,  
30 ~~in its or his discretion,~~ order the question to be tried before a jury and postpone the argument until the trial



1 can be ~~had~~ held. The question to be tried must be distinctly stated in the order for trial. The order may  
 2 also direct the jury to assess any damages ~~which~~ that the applicant may have sustained if it finds for ~~him~~  
 3 the applicant.

4 (2) If the proceeding is in the district court or before a district judge, the trial must take place as  
 5 in other cases. If a jury is required in the supreme court, a jury must be drawn and selected from the jury  
 6 box of Lewis and Clark County and the clerk of the district court of that county shall place the box in the  
 7 custody of the ~~clerk of the~~ supreme court for that purpose. The conduct of the trial must be the same as  
 8 in the district court, and the ~~clerk of the~~ supreme court administrator has the same authority to issue  
 9 process and enter orders and judgments as the district court clerk has in ~~like~~ similar cases."

10

11 **SECTION 13. SECTION 27-28-207, MCA, IS AMENDED TO READ:**

12 "27-28-207. **Procedure when action brought in supreme court.** Actions under this chapter  
 13 commenced in the supreme court must be conducted in the same manner as if commenced in the district  
 14 court, and the ~~clerk of the~~ supreme court administrator has the same authority to issue summons and other  
 15 process and to enter orders and judgments as the clerk of the district court has in ~~like~~ similar cases. All  
 16 pleadings and the conduct of the trial must be the same as in the district court. If a jury is required to  
 17 determine an issue of fact, a jury must be drawn and selected from the jury box of Lewis and Clark County  
 18 and the clerk of the district court of that county shall place the jury box in the custody of the ~~clerk of the~~  
 19 supreme court for that purpose."

20

21 **SECTION 14. SECTION 37-61-205, MCA, IS AMENDED TO READ:**

22 "37-61-205. **Application and examination fees.** (1) ~~Every~~ Each applicant for admission to the bar  
 23 shall pay to the state bar of Montana, at the time the applicant files an application for admission to the bar,  
 24 an application fee commensurate with the cost of processing the application as determined by the supreme  
 25 court.

26 (2) In addition to the fee provided for in subsection (1), the supreme court may charge an  
 27 examination fee commensurate with the cost of administering the bar examination. The examination fee  
 28 must be paid to the ~~clerk of the~~ supreme court administrator when the applicant files the application for  
 29 admission to the bar.

30 (3) All money collected and spent from fees provided for in subsection (1) must be accounted for

1 annually in a report by the state bar of Montana to the supreme court. The report must provide details of  
 2 fees collected and categories of expenditures for processing applications and must be in a form satisfactory  
 3 to the supreme court. All money collected from fees provided for in subsection (2) must be deposited ~~with~~  
 4 ~~the state treasurer by the clerk of the supreme court and placed in the~~ state general fund."

5  
 6 **SECTION 15. SECTION 37-61-206, MCA, IS AMENDED TO READ:**

7 "37-61-206. **Certificate of admission and license.** If upon examination ~~he~~ an applicant is found to  
 8 be qualified, the supreme court ~~must~~ shall admit ~~him~~ the applicant as an attorney and counselor in all the  
 9 courts of this state and ~~must~~ shall direct an order to be entered to that effect upon its records<sub>7</sub>, ~~and~~ The  
 10 court shall direct that a certificate of ~~such~~ the record be given to ~~him~~ the applicant by the ~~clerk of the~~  
 11 supreme court administrator<sub>7</sub>, ~~which~~ The certificate is ~~his~~ the license."

12  
 13 **SECTION 16. SECTION 37-61-209, MCA, IS AMENDED TO READ:**

14 "37-61-209. **Roll of attorneys.** The ~~clerk of the~~ supreme court administrator ~~must~~ shall keep a roll  
 15 of the attorneys and counselors admitted to practice<sub>7</sub>, ~~which~~ The roll must be signed by the person  
 16 admitted before ~~he~~ the person receives ~~his~~ a license."

17  
 18 **SECTION 17. SECTION 37-61-211, MCA, IS AMENDED TO READ:**

19 "37-61-211. **Annual license tax -- municipal tax prohibited.** (1) ~~Every~~ Each attorney or counselor  
 20 at law admitted by the supreme court of the state to practice ~~his profession~~ within the state is required to  
 21 pay a license tax of \$25 a year. The tax is payable to and collected by the ~~clerk of the~~ supreme court  
 22 administrator on or before April 1 of each year.

23 (2) Upon the payment of the tax, the ~~clerk~~ administrator shall issue and deliver a certificate to the  
 24 person paying the tax, certifying to the payment of the license tax and stating the period covered by the  
 25 payment.

26 (3) A license tax may not be imposed upon attorneys by a municipality or any other subdivision of  
 27 the state."

28  
 29 **SECTION 18. SECTION 37-61-212, MCA, IS AMENDED TO READ:**

30 "37-61-212. **Collection of delinquent license tax.** If any practicing attorney or counselor at law

1 ~~shall fail, neglect, or refuse~~ fails, neglects, or refuses to pay to the ~~clerk of the~~ supreme court administrator  
 2 the license tax imposed by this chapter for a period of 30 days after the ~~same tax~~ is due and payable, it  
 3 ~~shall be the duty of the clerk of the~~ supreme court administrator shall ~~to take such~~ action for the collection  
 4 of the ~~same tax.~~ as is The action must be the same as required of the county treasurer in cases of  
 5 nonpayment of other ~~licenses~~ license taxes, as provided by 7-21-2116, and the provisions of 7-21-2115  
 6 through 7-21-2117 ~~shall control in said~~ the proceedings so as far as the same they are applicable ~~thereto.~~"

7  
 8 **SECTION 19. SECTION 37-61-213, MCA, IS AMENDED TO READ:**

9 "37-61-213. **Disposition of license tax.** All ~~moneys so~~ money collected from license taxes during  
 10 any month ~~shall~~ must, on or before the first day of the succeeding month, be delivered to and deposited  
 11 with the state treasurer ~~by the clerk of the supreme court,~~ and the The state treasurer shall deposit such  
 12 ~~moneys~~ the money in the general fund."

13  
 14 **SECTION 20. SECTION 39-30-103, MCA, IS AMENDED TO READ:**

15 "39-30-103. **Definitions.** For the purposes of this chapter, the following definitions apply:

16 (1) "Eligible spouse" means the spouse of a handicapped person who is determined by the  
 17 department of social and rehabilitation services to have a 100% disability and who is unable to use ~~his~~ the  
 18 employment preference because of ~~his~~ the person's disability.

19 (2) "Handicapped person" means an individual certified by the department of social and  
 20 rehabilitation services to have a physical or mental impairment that substantially limits one or more major  
 21 life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability  
 22 to obtain, retain, or advance in employment.

23 (3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the  
 24 ranks of the current employees of:

25 (i) a department, as defined in 2-15-102, for a position within the executive branch;

26 (ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the  
 27 legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the  
 28 legislative branch;

29 (iii) a judicial agency, such as the office of supreme court administrator, ~~office of supreme court~~  
 30 ~~clerk,~~ state law library, or similar office in a state district court for a position within the judicial branch;

1 (iv) a city or town for a municipal position, including a city or municipal court position; and

2 (v) a county for a county position, including a justice's court position.

3 (b) A personnel action limited to current employees of a specific public entity identified in  
4 subsections (a)(i) through (a)(v) of this subsection (3), current employees in a reduction-in-force pool who  
5 have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this  
6 subsection (3), or current participants in a federally authorized employment program is not an initial hiring.

7 (4) (a) "Mental impairment" means:

8 (i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or  
9 any other neurologically handicapping condition closely related to mental retardation and requiring treatment  
10 similar to that required by mentally retarded individuals; or

11 (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive  
12 or volitional functions.

13 (b) The term mental impairment does not include alcoholism or drug addiction and does not include  
14 any mental impairment, disease, or defect that has been asserted by the individual claiming the preference  
15 as a defense to any criminal charge.

16 (5) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position  
17 or a similar permanent or seasonal position with a public employer other than the state. However, the term  
18 does not include:

19 (a) a temporary position as defined in 2-18-101 for a state position or similar temporary position  
20 with a public employer other than the state;

21 (b) a state or local elected official;

22 (c) employment as an elected official's immediate secretary, legal advisor, court reporter, or  
23 administrative, legislative, or other immediate or first-line aide;

24 (d) appointment by an elected official to a body such as a board, commission, committee, or  
25 council;

26 (e) appointment by an elected official to a public office if the appointment is provided for by law;

27 (f) a department head appointment by the governor or an executive department head appointment  
28 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local  
29 government; or

30 (g) engagement as an independent contractor or employment by an independent contractor.

1 (6) (a) "Public employer" means:

2 (i) any department, office, board, bureau, commission, agency, or other instrumentality of the  
3 executive, judicial, or legislative branch of the government of the state of Montana; and

4 (ii) any county, city, or town.

5 (b) The term does not include a school district, a vocational-technical center or program, a  
6 community college, the board of regents of higher education, the Montana university system, a special  
7 purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

8 (7) "Substantially equal qualifications" means the qualifications of two or more persons among  
9 whom the public employer cannot make a reasonable determination that the qualifications held by one  
10 person are significantly better suited for the position than the qualifications held by the other persons."

11

12 **SECTION 21. SECTION 46-18-604, MCA, IS AMENDED TO READ:**

13 **"46-18-604. Transmittal of sentencing data to supreme court -- compilation.** (1) Except as  
14 provided in subsection (2), the clerk of district court shall record on forms provided by the ~~clerk of the~~  
15 supreme court administrator the following sentencing data for each defendant sentenced:

16 (a) the name of the case;

17 (b) whether the conviction was by verdict or plea;

18 (c) the fine or imprisonment, or both, allowed by law;

19 (d) the actual fine or imprisonment, or both, imposed;

20 (e) the percentage of fine or imprisonment, or both, allowed by law that is actually imposed;

21 (f) the amount of fine or number of years of imprisonment, or both, that are suspended; and

22 (g) the percentage of fine or imprisonment, or both, imposed that is suspended.

23 (2) Whenever a sentence of death or of life imprisonment is allowed by law, this fact must be  
24 shown in the report, together with the case name and the actual sentence imposed.

25 (3) The clerk of district court shall report the names of the cases in which sentencing was deferred.

26 (4) The clerk of district court shall report the reasons given by the judge for the disposition of every  
27 case by attaching an extract of that portion of the judgment setting forth the basis for the sentence.

28 (5) The sentencing judge shall sign the form containing the information recorded by the clerk of  
29 district court pursuant to this section.

30 (6) The clerk of district court shall, on a quarterly basis, total for each judge the data recorded

1 pursuant to subsections (1) and (2), sign the report, and forward ~~all such~~ the data to the ~~clerk of the~~  
 2 supreme court administrator.

3 (7) The ~~clerk of the~~ supreme court administrator shall compile the reports submitted by the district  
 4 court clerks and distribute the data to all district court clerks and any interested party on April 1 of each  
 5 year.

6 (8) The ~~clerk of the~~ supreme court administrator shall provide a form for the recording of data  
 7 required by this section."

8

9 **SECTION 22. SECTION 46-18-901, MCA, IS AMENDED TO READ:**

10 **"46-18-901. Review division of the supreme court for review of sentences.** (1) The chief justice  
 11 of the supreme court of Montana shall appoint three district court judges to act as a review division of the  
 12 supreme court and shall designate one of ~~such the~~ judges to act as ~~chairman thereof~~ presiding judge. The  
 13 ~~clerk of the Montana~~ supreme court administrator shall record ~~such appointment~~ the appointments and shall  
 14 give notice ~~thereof~~ of the appointments to the clerk of every district court.

15 (2) This review division shall meet at least four times a year or more as its business requires, as  
 16 determined by the ~~chairman~~ presiding judge. The review division shall hold its meetings at Deer Lodge.

17 (3) The decision of any two of ~~such the~~ judges ~~shall be~~ is sufficient to determine any matter before  
 18 the review division.

19 (4) The review division may adopt any rules ~~which that~~ will expedite its review of sentences. The  
 20 division ~~is also authorized to~~ may appoint a secretary and ~~such~~ clerical help as it ~~deems~~ considers adequate  
 21 and fix their compensation."

22

23 **SECTION 23. SECTION 46-20-706, MCA, IS AMENDED TO READ:**

24 **"46-20-706. Termination of appeal -- remand.** (1) Upon termination of the appeal, the supreme  
 25 court shall remand the cause with proper instruction, together with the opinion of the court. The ~~clerk~~  
 26 court shall return all original documents to the trial court.

27 (2) After the cause has been remanded to the trial court, the appellate court has no further  
 28 jurisdiction of the appeal or the proceedings ~~thereon~~ and all orders necessary to carry the judgment into  
 29 effect must be made by the court to which the cause is remanded."

30

1 NEW SECTION. Section 24. Repealer. Sections 3-2-401 and 3-2-406, MCA, are repealed.

2  
3 ~~NEW SECTION. Section 8. Codification instruction.~~ [Section 1] is intended to be codified as an  
4 integral part of Title 3, chapter 2, part 4, and the provisions of Title 3, chapter 2, part 4, apply to [section  
5 4].

6  
7 NEW SECTION. SECTION 25. RESTRICTION ON CANDIDACY FOR OFFICE OF CLERK OF  
8 SUPREME COURT. THE SECRETARY OF STATE MAY NOT ACCEPT DECLARATIONS FOR NOMINATION  
9 FOR THE OFFICE OF CLERK OF THE SUPREME COURT IN THE YEAR 2000.

10  
11 NEW SECTION. Section 26. Effective date DATES. (1) ~~[This act] is [SECTIONS 1 THROUGH 24]~~  
12 ARE effective January 1, 1996 2001.

13 (2) [SECTION 25] AND THIS SECTION ARE EFFECTIVE JULY 1, 1995.

14 -END-



## HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Page 1 of 2

Mr. Speaker: We, the committee on State Administration report that Senate Bill 249 (third reading copy -- blue) be concurred in as amended.

Signed: *Dick Simpkins*  
Dick Simpkins, Chair

Carried by: Rep. Rehbein

And, that such amendments read:

1. Title, line 10.  
Following: "~~DELAYED~~"  
Insert: "A DELAYED"
2. Title, line 11.  
Strike: "DATES"  
Insert: "DATE"
3. Page 13, lines 7 through 9.  
Strike: Section 25 in its entirety  
Renumber: subsequent section
4. Page 13, line 11.  
Strike: "DATES"  
Insert: "date"
5. Page 13, lines 11 and 12.  
Strike: "(1)"  
Strike: "[SECTIONS 1 THROUGH 24] ARE"  
Insert: "[This act] is"
6. Page 13, line 12.  
Strike: "2001"  
Insert: "1996"

Committee Vote:  
Yes 11, No 7.

**SB 249**  
**HOUSE**

661121SC.Hbk



7. Page 13, line 13.  
Strike: subsection (2) in its entirety

-END-

## 1 SENATE BILL NO. 249

2 INTRODUCED BY BISHOP

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE ELECTED POSITION OF CLERK OF THE  
 5 SUPREME COURT; ~~REPLACING THE ELECTED OFFICE WITH A CLERK OF THE SUPREME COURT~~  
 6 ~~APPOINTED BY THE CHIEF JUSTICE; TRANSFERRING CERTAIN FUNCTIONS TO THE SUPREME COURT~~  
 7 ~~ADMINISTRATOR; AMENDING SECTIONS 2-16-111, 2-16-405, 2-16-505, 3-1-202, 3-1-1007, 3-2-304,~~  
 8 ~~3-2-402, 3-2-403, 13-12-207, AND 13-16-504, 19-5-404, 27-26-303, 27-28-207, 37-61-205, 37-61-206,~~  
 9 ~~37-61-209, 37-61-211, 37-61-212, 37-61-213, 39-30-103, 46-18-604, 46-18-901, AND 46-20-706,~~  
 10 MCA; REPEALING SECTIONS 3-2-401 AND 3-2-406, MCA; AND PROVIDING ~~A DELAYED~~ A DELAYED  
 11 EFFECTIVE ~~DATE~~ DATES DATE."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14  
 15 ~~NEW SECTION. Section 1. Clerk of supreme court appointment. There is an office of clerk of~~  
 16 ~~the supreme court. The chief justice shall appoint a clerk of the supreme court. The clerk shall hold office~~  
 17 ~~at the pleasure of the court.~~

18  
 19 **Section 1.** Section 2-16-111, MCA, is amended to read:

20 **"2-16-111. Residence of officers.** (1) The following officers ~~must~~ shall reside and keep their offices  
 21 at the seat of government: the governor, secretary of state, state auditor, attorney general, superintendent  
 22 of public instruction, and justices of the supreme court, ~~and clerk of the supreme court.~~

23 (2) Restrictions upon the residence of other officers are contained in the chapter or part relating  
 24 to the respective officers."

25  
 26 **Section 2.** Section 2-16-405, MCA, is amended to read:

27 **"2-16-405. Salaries of certain elected state officials.** The salaries paid to certain elected officials  
 28 of the state of Montana for fiscal year 1992 and following years are:

Fiscal Year	Following
1992	June 30, 1992

1	Governor	\$54,254	\$55,502
2	Lieutenant governor	\$39,218	\$40,466
3	Attorney general	\$49,593	\$50,841
4	State auditor	\$36,278	\$37,526
5	Superintendent of public		
6	instruction	\$42,929	\$44,177
7	Public service commission		
8	chairman <u>presiding officer</u>	\$40,502	\$41,750
9	Public service commissioners,		
10	<del>other than chairman</del>	\$39,218	\$40,466
11	Secretary of state	\$36,278	\$37,526
12	<del>Clerk of the supreme court</del>	<del>\$35,289</del>	<del>\$36,537</del>

13

14 **Section 3.** Section 2-16-505, MCA, is amended to read:

15 **"2-16-505. Filling vacancies in certain elective offices.** A vacancy in the office of either the  
 16 secretary of state, state auditor, attorney general, ~~clerk of the supreme court,~~ or superintendent of public  
 17 instruction must be filled by a person appointed by the governor, ~~who~~. The appointed person holds his  
 18 office until the first Monday in January next after a general election. At ~~such~~ the election, the office must  
 19 be filled by election for the unexpired term."

20

21 **SECTION 4. SECTION 3-1-202, MCA, IS AMENDED TO READ:**

22 **"3-1-202. Seal of supreme court.** The seal of the supreme court is circular in form and not less  
 23 than 1 3/4 inches in diameter, on which are engraved the words "Supreme Court, State of Montana", with  
 24 the word "Seal" in the center ~~thereof of the words,~~ which The seal must be procured by the ~~clerk of the~~  
 25 supreme court at the expense of the state, ~~and~~ and an impression ~~thereof of the seal,~~ certified to by the ~~clerk~~  
 26 court, must be filed with the secretary of state."

27

28 **SECTION 5. SECTION 3-1-1007, MCA, IS AMENDED TO READ:**

29 **"3-1-1007. Commission to make rules -- confidentiality of proceedings.** (1) The commission shall  
 30 adopt and publish rules:

1 (a) for the conduct of its affairs and the format of reports filed under 3-1-1010;

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

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

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

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

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

11 (4) The proceedings of the commission and the related documents ~~shall~~ must be open to the public  
12 except when the demands of individual privacy clearly exceed the merits of public disclosure."  
13

14 **SECTION 6. SECTION 3-2-304, MCA, IS AMENDED TO READ:**

15 "3-2-304. **Physical facilities.** (1) If proper rooms in which to hold the court and for the  
16 accommodation of the officers ~~thereof of the court~~ are not provided by the state, together with attendants,  
17 furniture, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court or  
18 a majority ~~thereof of the court~~ may direct ~~the clerk of the~~ supreme court administrator to provide ~~such the~~  
19 rooms, attendants, furniture, lights, fuel, and stationery.

20 (2) The expenses ~~thereof referred to in subsection (1),~~ certified by any two justices to be correct,  
21 must be paid only out of ~~the state treasury only out of~~ funds in the state treasury appropriated to the  
22 supreme court."  
23

24 **SECTION 7. SECTION 3-2-402, MCA, IS AMENDED TO READ:**

25 "3-2-402. **Duties.** It is the duty of the ~~clerk~~ supreme court administrator to:

26 (1) keep the seal of the supreme court, its records and files, and the roll of attorneys and counselors  
27 at law;

28 (2) adjourn the court from day to day at the beginning of any term in the absence of any justice  
29 and until the arrival of a majority of the justices;

30 (3) file all papers or transcripts required by law to be filed;

- 1 (4) issue writs and certificates and approve bonds or undertakings when ~~so~~ required;
- 2 (5) make out all transcripts to the supreme court of the United States;
- 3 (6) make copies of papers or records when demanded by law or the rules of the court; and
- 4 (7) perform ~~such~~ other duties as may be required ~~of him~~ by law and the rules and practice of the
- 5 supreme court."

6  
7 **SECTION 8. SECTION 3-2-403, MCA, IS AMENDED TO READ:**

8 "3-2-403. Fees. The ~~clerk~~ supreme court administrator ~~must~~ shall collect the following fees:

- 9 (1) for filing the transcript on appeal in any civil case appealed to the supreme court, \$75 payable
- 10 by the appellant as payment in full for all services rendered in the case up to the remittitur to the court
- 11 below;
- 12 (2) for filing a petition for any writ, \$75, as payment in full for all services rendered in the cause;
- 13 (3) for a certificate of good standing as an attorney, \$5;
- 14 (4) for preparing copies of documents on file, 15 cents per page;
- 15 (5) for each certified copy under seal, \$1."

16  
17 **Section 9. Section 13-12-207, MCA, is amended to read:**

18 "13-12-207. Order of placement. (1) The order on the ballot for state and national offices ~~shall be~~

19 is as follows:

20 (a) If the election is in a year in which a president of the United States is to be elected, in spaces

21 separated from the balance of the party tickets by a heavy black line ~~shall~~ must be the names and spaces

22 for voting for candidates for president and vice president. The names of candidates for president and vice

23 president for each political party ~~shall~~ must be grouped together.

- 24 (b) United States senator;
- 25 (c) United States representative;
- 26 (d) ~~Governor~~ governor and lieutenant governor;
- 27 (e) ~~Secretary~~ secretary of state;
- 28 (f) ~~Attorney~~ attorney general;
- 29 (g) ~~State~~ state auditor;
- 30 (h) ~~Public~~ public service commissioners;

1 (i) ~~State~~ state superintendent of public instruction;

2 ~~(j) Clerk of the supreme court;~~

3 ~~(k)(j) Chief~~ chief justice of the supreme court;

4 ~~((k) Justices~~ justices of the supreme court;

5 ~~(m)(l) District~~ district court judges;

6 ~~(n)(m) State~~ state senators;

7 ~~(o)(n) Members~~ members of the house of representatives.

8 (2) The following order of placement ~~shall~~ must be observed for county offices:

9 (a) clerk of the district court;

10 (b) county commissioner;

11 (c) county clerk and recorder;

12 (d) sheriff;

13 (e) coroner;

14 (f) county attorney;

15 (g) county superintendent of schools;

16 (h) county auditor;

17 (i) public administrator;

18 (j) county assessor;

19 (k) county treasurer;

20 (l) surveyor;

21 (m) justice of the peace.

22 (3) The secretary of state shall designate the order for placement on the ballot of any offices not  
23 on the ~~above~~ lists in subsections (1) and (2), except that the election administrator shall designate the order  
24 of placement for municipal, charter, consolidated, or confederated local government offices and district  
25 offices when the district is part of only one county.

26 (4) Constitutional amendments ~~shall~~ must be placed before statewide referendum and initiative  
27 measures. Ballot issues for a county, municipality, school district, or other political subdivision ~~shall~~ must  
28 follow statewide measures in the order designated by the election administrator.

29 (5) If any offices are not to be elected, they ~~shall~~ may not be listed, but the order of the offices to  
30 be filled ~~shall~~ must be maintained.

1 (6) If there is a short-term and a long-term election for the same office, the long-term office ~~shall~~  
2 must precede the short-term office."

3  
4 **Section 10.** Section 13-16-504, MCA, is amended to read:

5 **"13-16-504. Tie vote in election for state executive officers.** If there is a tie vote for governor and  
6 lieutenant governor, secretary of state, attorney general, state auditor, ~~clerk of the supreme court,~~  
7 superintendent of public instruction, or any other state executive officer, the secretary of state shall  
8 transmit a certified copy of the statement to the legislature, showing the votes cast for the two or more  
9 candidates having an equal and the highest number of votes. The legislature, at its next regular session,  
10 shall elect one of these candidates to fill the office by joint ballot of the two houses."

11  
12 **SECTION 11. SECTION 19-5-404, MCA, IS AMENDED TO READ:**

13 **"19-5-404. Contributions by state.** (1) The state of Montana shall contribute monthly to the  
14 pension trust fund a sum equal to 6% of the compensation of each member. In addition, the clerk of each  
15 district court shall transmit 68% of certain filing fees as required under 25-1-201(2) and that portion of the  
16 fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in  
17 25-1-201(4) and (6) to the state, which shall first deposit in the pension trust fund an amount equal to  
18 34.71% of the total compensation paid to district judges and supreme court justices who are covered by  
19 the judges' retirement system and then deposit the balance in the state general fund. ~~The clerk of the~~  
20 supreme court administrator shall pay one-fourth of the fees collected under 3-2-403 to the division to be  
21 credited to the pension trust fund.

22 (2) The state of Montana shall contribute monthly from the renewable resource grant and loan  
23 program account in the state special revenue fund to the judges' pension trust fund an amount equal to  
24 34.71% of the compensation paid to the chief water court judge."

25  
26 **SECTION 12. SECTION 27-26-303, MCA, IS AMENDED TO READ:**

27 **"27-26-303. Jury trial.** (1) If an answer is made ~~which~~ that raises a question as to a matter of fact  
28 essential to the determination of the motion and affecting the substantial rights of the parties, and upon  
29 the supposed truth of the allegation of which the application for the writ is based, the court or judge may,  
30 ~~in its or his discretion,~~ order the question to be tried before a jury and postpone the argument until the trial

1 can be ~~had~~ held. The question to be tried must be distinctly stated in the order for trial. The order may  
 2 also direct the jury to assess any damages ~~which~~ that the applicant may have sustained if it finds for ~~him~~  
 3 the applicant.

4 (2) If the proceeding is in the district court or before a district judge, the trial must take place as  
 5 in other cases. If a jury is required in the supreme court, a jury must be drawn and selected from the jury  
 6 box of Lewis and Clark County and the clerk of the district court of that county shall place the box in the  
 7 custody of the ~~clerk of the~~ supreme court for that purpose. The conduct of the trial must be the same as  
 8 in the district court, and the ~~clerk of the~~ supreme court administrator has the same authority to issue  
 9 process and enter orders and judgments as the district court clerk has in ~~like~~ similar cases."  
 10

11 **SECTION 13. SECTION 27-28-207, MCA, IS AMENDED TO READ:**

12 "27-28-207. **Procedure when action brought in supreme court.** Actions under this chapter  
 13 commenced in the supreme court must be conducted in the same manner as if commenced in the district  
 14 court, and the ~~clerk of the~~ supreme court administrator has the same authority to issue summons and other  
 15 process and to enter orders and judgments as the clerk of the district court has in ~~like~~ similar cases. All  
 16 pleadings and the conduct of the trial must be the same as in the district court. If a jury is required to  
 17 determine an issue of fact, a jury must be drawn and selected from the jury box of Lewis and Clark County  
 18 and the clerk of the district court of that county shall place the jury box in the custody of the ~~clerk of the~~  
 19 supreme court for that purpose."  
 20

21 **SECTION 14. SECTION 37-61-205, MCA, IS AMENDED TO READ:**

22 "37-61-205. **Application and examination fees.** (1) ~~Every~~ Each applicant for admission to the bar  
 23 shall pay to the state bar of Montana, at the time the applicant files an application for admission to the bar,  
 24 an application fee commensurate with the cost of processing the application as determined by the supreme  
 25 court.

26 (2) In addition to the fee provided for in subsection (1), the supreme court may charge an  
 27 examination fee commensurate with the cost of administering the bar examination. The examination fee  
 28 must be paid to the ~~clerk of the~~ supreme court administrator when the applicant files the application for  
 29 admission to the bar.

30 (3) All money collected and spent from fees provided for in subsection (1) must be accounted for



1 annually in a report by the state bar of Montana to the supreme court. The report must provide details of  
 2 fees collected and categories of expenditures for processing applications and must be in a form satisfactory  
 3 to the supreme court. All money collected from fees provided for in subsection (2) must be deposited ~~with~~  
 4 ~~the state treasurer by the clerk of the supreme court and placed~~ in the state general fund."

5  
 6 **SECTION 15. SECTION 37-61-206, MCA, IS AMENDED TO READ:**

7 "37-61-206. **Certificate of admission and license.** If upon examination ~~he~~ an applicant is found to  
 8 be qualified, the supreme court ~~must~~ shall admit ~~him~~ the applicant as an attorney and counselor in all the  
 9 courts of this state and ~~must~~ shall direct an order to be entered to that effect upon its records<sub>72</sub> ~~and~~ The  
 10 court shall direct that a certificate of ~~such~~ the record be given to ~~him~~ the applicant by the ~~clerk of the~~  
 11 supreme court administrator<sub>72</sub> ~~which~~ The certificate is ~~his~~ the license."

12  
 13 **SECTION 16. SECTION 37-61-209, MCA, IS AMENDED TO READ:**

14 "37-61-209. **Roll of attorneys.** The ~~clerk of the~~ supreme court administrator ~~must~~ shall keep a roll  
 15 of the attorneys and counselors admitted to practice<sub>72</sub> ~~which~~ The roll must be signed by the person  
 16 admitted before ~~he~~ the person receives ~~his~~ a license."

17  
 18 **SECTION 17. SECTION 37-61-211, MCA, IS AMENDED TO READ:**

19 "37-61-211. **Annual license tax -- municipal tax prohibited.** (1) ~~Every~~ Each attorney or counselor  
 20 at law admitted by the supreme court of the state to practice ~~his profession~~ within the state is required to  
 21 pay a license tax of \$25 a year. The tax is payable to and collected by the ~~clerk of the~~ supreme court  
 22 administrator on or before April 1 of each year.

23 (2) Upon the payment of the tax, the ~~clerk~~ administrator shall issue and deliver a certificate to the  
 24 person paying the tax, certifying to the payment of the license tax and stating the period covered by the  
 25 payment.

26 (3) A license tax may not be imposed upon attorneys by a municipality or any other subdivision of  
 27 the state."

28  
 29 **SECTION 18. SECTION 37-61-212, MCA, IS AMENDED TO READ:**

30 "37-61-212. **Collection of delinquent license tax.** If any practicing attorney or counselor at law

1 ~~shall fail, neglect, or refuse~~ fails, neglects, or refuses to pay to the ~~clerk of the supreme court~~ administrator  
 2 the license tax imposed by this chapter for a period of 30 days after the ~~same tax~~ is due and payable, it  
 3 ~~shall be the duty of the clerk of the supreme court~~ administrator shall to take such action for the collection  
 4 of the ~~same tax.~~ as is The action must be the same as required of the county treasurer in cases of  
 5 nonpayment of other ~~licenses~~ license taxes, as provided by 7-21-2116, and the provisions of 7-21-2115  
 6 through 7-21-2117 ~~shall control in said the proceedings so as far as the same they~~ are applicable ~~thereto.~~"

8 **SECTION 19. SECTION 37-61-213, MCA, IS AMENDED TO READ:**

9 "37-61-213. **Disposition of license tax.** All ~~moneys so~~ money collected from license taxes during  
 10 any month ~~shall~~ must, on or before the first day of the succeeding month, be delivered to and deposited  
 11 with the state treasurer ~~by the clerk of the supreme court,~~ and the The state treasurer shall deposit such  
 12 ~~moneys~~ the money in the general fund."

14 **SECTION 20. SECTION 39-30-103, MCA, IS AMENDED TO READ:**

15 "39-30-103. **Definitions.** For the purposes of this chapter, the following definitions apply:

16 (1) "Eligible spouse" means the spouse of a handicapped person who is determined by the  
 17 department of social and rehabilitation services to have a 100% disability and who is unable to use ~~his~~ the  
 18 employment preference because of ~~his~~ the person's disability.

19 (2) "Handicapped person" means an individual certified by the department of social and  
 20 rehabilitation services to have a physical or mental impairment that substantially limits one or more major  
 21 life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability  
 22 to obtain, retain, or advance in employment.

23 (3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the  
 24 ranks of the current employees of:

25 (i) a department, as defined in 2-15-102, for a position within the executive branch;

26 (ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the  
 27 legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the  
 28 legislative branch;

29 (iii) a judicial agency, such as the office of supreme court administrator, ~~office of supreme court~~  
 30 ~~clerk,~~ state law library, or similar office in a state district court for a position within the judicial branch;

1 (iv) a city or town for a municipal position, including a city or municipal court position; and

2 (v) a county for a county position, including a justice's court position.

3 (b) A personnel action limited to current employees of a specific public entity identified in  
4 subsections (a)(i) through (a)(v) of this subsection (3), current employees in a reduction-in-force pool who  
5 have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this  
6 subsection (3), or current participants in a federally authorized employment program is not an initial hiring.

7 (4) (a) "Mental impairment" means:

8 (i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or  
9 any other neurologically handicapping condition closely related to mental retardation and requiring treatment  
10 similar to that required by mentally retarded individuals; or

11 (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive  
12 or volitional functions.

13 (b) The term mental impairment does not include alcoholism or drug addiction and does not include  
14 any mental impairment, disease, or defect that has been asserted by the individual claiming the preference  
15 as a defense to any criminal charge.

16 (5) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position  
17 or a similar permanent or seasonal position with a public employer other than the state. However, the term  
18 does not include:

19 (a) a temporary position as defined in 2-18-101 for a state position or similar temporary position  
20 with a public employer other than the state;

21 (b) a state or local elected official;

22 (c) employment as an elected official's immediate secretary, legal advisor, court reporter, or  
23 administrative, legislative, or other immediate or first-line aide;

24 (d) appointment by an elected official to a body such as a board, commission, committee, or  
25 council;

26 (e) appointment by an elected official to a public office if the appointment is provided for by law;

27 (f) a department head appointment by the governor or an executive department head appointment  
28 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local  
29 government; or

30 (g) engagement as an independent contractor or employment by an independent contractor.

1 (6) (a) "Public employer" means:

2 (i) any department, office, board, bureau, commission, agency, or other instrumentality of the  
3 executive, judicial, or legislative branch of the government of the state of Montana; and

4 (ii) any county, city, or town.

5 (b) The term does not include a school district, a vocational-technical center or program, a  
6 community college, the board of regents of higher education, the Montana university system, a special  
7 purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

8 (7) "Substantially equal qualifications" means the qualifications of two or more persons among  
9 whom the public employer cannot make a reasonable determination that the qualifications held by one  
10 person are significantly better suited for the position than the qualifications held by the other persons."  
11

12 **SECTION 21. SECTION 46-18-604, MCA, IS AMENDED TO READ:**

13 **"46-18-604. Transmittal of sentencing data to supreme court -- compilation.** (1) Except as  
14 provided in subsection (2), the clerk of district court shall record on forms provided by the ~~clerk of the~~  
15 supreme court administrator the following sentencing data for each defendant sentenced:

16 (a) the name of the case;

17 (b) whether the conviction was by verdict or plea;

18 (c) the fine or imprisonment, or both, allowed by law;

19 (d) the actual fine or imprisonment, or both, imposed;

20 (e) the percentage of fine or imprisonment, or both, allowed by law that is actually imposed;

21 (f) the amount of fine or number of years of imprisonment, or both, that are suspended; and

22 (g) the percentage of fine or imprisonment, or both, imposed that is suspended.

23 (2) Whenever a sentence of death or of life imprisonment is allowed by law, this fact must be  
24 shown in the report, together with the case name and the actual sentence imposed.

25 (3) The clerk of district court shall report the names of the cases in which sentencing was deferred.

26 (4) The clerk of district court shall report the reasons given by the judge for the disposition of every  
27 case by attaching an extract of that portion of the judgment setting forth the basis for the sentence.

28 (5) The sentencing judge shall sign the form containing the information recorded by the clerk of  
29 district court pursuant to this section.

30 (6) The clerk of district court shall, on a quarterly basis, total for each judge the data recorded

1 pursuant to subsections (1) and (2), sign the report, and forward ~~all such~~ the data to the ~~clerk of the~~  
 2 supreme court administrator.

3 (7) The ~~clerk of the~~ supreme court administrator shall compile the reports submitted by the district  
 4 court clerks and distribute the data to all district court clerks and any interested party on April 1 of each  
 5 year.

6 (8) The ~~clerk of the~~ supreme court administrator shall provide a form for the recording of data  
 7 required by this section."  
 8

9 **SECTION 22. SECTION 46-18-901, MCA, IS AMENDED TO READ:**

10 **"46-18-901. Review division of the supreme court for review of sentences.** (1) The chief justice  
 11 of the supreme court of Montana shall appoint three district court judges to act as a review division of the  
 12 supreme court and shall designate one of ~~such~~ the judges to act as ~~chairman thereof~~ presiding judge. The  
 13 ~~clerk of the Montana~~ supreme court administrator shall record ~~such appointment~~ the appointments and shall  
 14 give notice ~~thereof~~ of the appointments to the clerk of every district court.

15 (2) This review division shall meet at least four times a year or more as its business requires, as  
 16 determined by the ~~chairman~~ presiding judge. The review division shall hold its meetings at Deer Lodge.

17 (3) The decision of any two of ~~such~~ the judges ~~shall be~~ is sufficient to determine any matter before  
 18 the review division.

19 (4) The review division may adopt any rules ~~which~~ that will expedite its review of sentences. The  
 20 division ~~is also authorized to~~ may appoint a secretary and ~~such~~ clerical help as it ~~deems~~ considers adequate  
 21 and fix their compensation."  
 22

23 **SECTION 23. SECTION 46-20-706, MCA, IS AMENDED TO READ:**

24 **"46-20-706. Termination of appeal -- remand.** (1) Upon termination of the appeal, the supreme  
 25 court shall remand the cause with proper instruction, together with the opinion of the court. The ~~clerk~~  
 26 court shall return all original documents to the trial court.

27 (2) After the cause has been remanded to the trial court, the appellate court has no further  
 28 jurisdiction of the appeal or the proceedings ~~thereon~~ and all orders necessary to carry the judgment into  
 29 effect must be made by the court to which the cause is remanded."  
 30

1            NEW SECTION. Section 24. Repealer. Sections 3-2-401 and 3-2-406, MCA, are repealed.

2

3            ~~NEW SECTION. Section 8. Codification instruction.~~ [Section 1] is intended to be codified as an  
4 integral part of Title 3, chapter 2, part 4, and the provisions of Title 3, chapter 2, part 4, apply to [section  
5 4].

6

7            ~~NEW SECTION. SECTION 25. RESTRICTION ON CANDIDACY FOR OFFICE OF CLERK OF  
8 SUPREME COURT. THE SECRETARY OF STATE MAY NOT ACCEPT DECLARATIONS FOR NOMINATION  
9 FOR THE OFFICE OF CLERK OF THE SUPREME COURT IN THE YEAR 2000.~~

10

11            NEW SECTION. Section 25. Effective date DATES DATE. ~~(1) [This act] is [SECTIONS 1 THROUGH~~  
12 ~~24] ARE [THIS ACT] IS~~ effective January 1, ~~1996~~ 2001 1996.

13            ~~(2) [SECTION 25] AND THIS SECTION ARE EFFECTIVE JULY 1, 1995.~~

14

-END-

GOVERNOR'S AMENDMENT TO  
SENATE BILL NO. 249  
(REFERENCE COPY)  
April 11, 1995

I. Title, line 10.  
Strike: "A DELAYED"

II. Title, line 11.  
Strike: "DATE"  
Insert: "DATES"

III. Page 13, line 10.  
Insert: "NEW SECTION. Section 25. Restriction on candidacy for  
office of clerk of supreme court. The secretary of state may  
not accept declarations for nomination for the office of clerk  
of the supreme court in the year 2000."  
Renumber: subsequent sections

IV. Page 13, line 11.  
Strike: "DATE"  
Insert: "dates"  
Following: "."  
Insert: "(1) Except as provided in subsection (2),"

V. Page 13, line 12.  
Strike: "1996"  
Insert: "2001"

VI. Page 13, line 14.  
Insert: "(2) [Section 25] and this section are effective July 1,  
1995."

SB 249