

SENATE BILL NO. 386

INTRODUCED BY BENGTON, GROSFIELD, T. BECK, BLAYLOCK,
M. HANSON, WEEDING, KIMBERLEY, PINSONEAULT
BY REQUEST OF THE GOVERNOR

IN THE SENATE

FEBRUARY 14, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

 FIRST READING.

FEBRUARY 23, 1991 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

FEBRUARY 25, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 26, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 48; NOES, 1.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

 FIRST READING.

APRIL 2, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

APRIL 6, 1991 SECOND READING, CONCURRED IN.

 ON MOTION, RULES SUSPENDED. BILL
PLACED ON THIRD READING THIS DAY.

 THIRD READING, CONCURRED IN.
AYES, 95; NOES, 2.

 RETURNED TO SENATE.

IN THE SENATE

APRIL 9, 1991 RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *386*
 2 INTRODUCED BY *Bennett* *Griffith* *T. Beck*
 3 *Stylock* *M. Johnson* BY REQUEST OF THE GOVERNOR *Welding*
 4 *Timberley* *Pisano*

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A WATER
 6 RIGHT MAY BE TEMPORARILY CHANGED; AND AMENDING SECTION
 7 85-2-404, MCA."
 8

9 STATEMENT OF INTENT

10 It is the declared policy of the state in 85-1-101 that
 11 water resources be put to optimum beneficial use to secure
 12 maximum economic and social prosperity for its citizens. The
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 14 vary from year to year. As water supplies become fully
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17 The appropriate means of reallocating water among
 18 competing demands is with the voluntary approval of water
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 21 loss of appropriation rights, and to the profit of prior
 22 appropriators, through the temporary change of water rights
 23 in anticipation of periods of water scarcity. This
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 3 prosperity of all Montana citizens.
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5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 NEW SECTION. Section 1. Temporary changes in
 7 appropriation right. (1) An appropriator may not make a
 8 temporary change in appropriation right for his use or
 9 another's use except with department approval in accordance
 10 with 85-2-402 and this section.

11 (2) A temporary change in appropriation right may be
 12 approved for a period not to exceed 10 years. A temporary
 13 change in appropriation right may be approved for
 14 consecutive or intermittent use.

15 (3) An authorization for a temporary change in
 16 appropriation right may be renewed by the department for a
 17 period not to exceed 10 years. Renewal of an authorization
 18 for a temporary change in appropriation right requires
 19 application to the department by the appropriator. Upon
 20 application, the department shall notify other appropriators
 21 potentially affected by the renewal and shall allow 30 days
 22 for submission of new evidence of adverse effects to other
 23 water rights. A temporary change authorization may not be
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 25 an appropriator, other than an appropriator described in



1 subsection (7), is adversely affected.

2 (4) During the term of the original temporary change
3 authorization, the department may modify or revoke its
4 authorization for a temporary change if it determines that
5 the right of an appropriator, other than an appropriator
6 described in subsection (7), is adversely affected.

7 (5) The priority of appropriation for a temporary
8 change in appropriation right is the same as the priority of
9 appropriation of the right that is temporarily changed.

10 (6) Neither a change in appropriation right nor any
11 other authorization right is required for reversion of the
12 appropriation right to the permanent purpose, place of use,
13 point of diversion, or place of storage after the period for
14 which a temporary change was authorized expires.

15 (7) A person issued a water use permit with a priority
16 of appropriation after the date of filing of an application
17 for a temporary change in appropriation right under this
18 section may not object to the exercise of the temporary
19 change according to its terms, the renewal of the
20 authorization for the temporary change, or the reversion of
21 the appropriation right to its permanent purpose, place of
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23 described in this subsection must be notified of the
24 existence of any temporary change authorizations from the
25 same source of supply.

1 (8) If a water right for which a temporary change has
2 been approved is transferred as an appurtenance of real
3 property, the temporary change remains in effect unless
4 another change in appropriation right is authorized by the
5 department.

6 **Section 2.** Section 85-2-404, MCA, is amended to read:

7 **"85-2-404. (Temporary) Abandonment of appropriation**
8 **right.** (1) If an appropriator ceases to use all or a part of
9 his appropriation right with the intention of wholly or
10 partially abandoning the right or if he ceases using his
11 appropriation right according to its terms and conditions
12 with the intention of not complying with those terms and
13 conditions, the appropriation right shall, to that extent,
14 be considered abandoned and shall immediately expire.

15 (2) If an appropriator ceases to use all or part of his
16 appropriation right or ceases using his appropriation right
17 according to its terms and conditions for a period of 10
18 successive years and there was water available for his use,
19 there is a prima facie presumption that the appropriator has
20 abandoned his right in whole or for the part not used.

21 (3) If an appropriator ceases to use all or part of his
22 appropriation right because the land to which the water is
23 applied to a beneficial use is contracted under a state or
24 federal conservation set-aside program:

25 (a) the set-aside and resulting reduction in use of the

1 appropriation right does not represent an intent by the
2 appropriator to wholly or partially abandon the
3 appropriation right or to not comply with the terms and
4 conditions attached to the right; and

5 (b) the period of nonuse that occurs for part or all of
6 the appropriation right as a result of the contract may not
7 create or may not be added to any previous period of nonuse
8 to create a prima facie presumption of abandonment.

9 (4) The lease of an existing right pursuant to 85-2-436
10 does or the temporary change pursuant to [section 1] does
11 not constitute an abandonment by--the--lessor or serve as
12 evidence that could be used to establish an abandonment by
13 the-lessor of any part of the right.

14 (5) Subsections (1) and (2) do not apply to existing
15 rights until they have been determined in accordance with
16 part 2 of this chapter. (Terminates June 30, 1993--sec. 11,
17 Ch. 658, L. 1989.)

18 85-2-404. (Effective July 1, 1993) Abandonment of
19 appropriation right. (1) If an appropriator ceases to use
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LC 0905/01

1 rights until they have been determined in accordance with
2 part 2 of this chapter."

3 NEW SECTION. **Section 3.** Codification instruction.

4 [Section 1] is intended to be codified as an integral part
5 of Title 85, chapter 2, part 4, and the provisions of Title
6 85, chapter 2, part 4, apply to [section 1].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0386, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill clarifies that a water right may be temporarily changed.

ASSUMPTIONS:

Department of Natural Resources and Conservation:

This bill merely clarifies the statute with respect to temporary changes in water rights. By clarifying the statute, however, there is likely to be an increase in the number of applications for change in appropriation rights that DNRC will receive.

1. There will be an additional 5 temporary applications per year.
2. Objections will be received on 2 of the applications.
3. One application with objections will proceed to a contested-case hearing.
4. The DNRC costs to administratively process one change application is \$300.
5. The DNRC costs to address and handle objections for each application is \$500.
6. The DNRC costs to hold one contested-case hearing is \$2,000.
7. The DNRC collects \$50 for each change application in appropriation right.
8. The DNRC costs to adopt and publish administrative rules to implement this legislation will be \$1,500 for FY92 only.


Department of Fish, Wildlife, and Parks:

9. Any increased responsibilities would be handled by current staff.

FISCAL IMPACT:

Department of Natural Resources and Conservation:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Operating Costs	0	6,000	6,000	0	4,500	4,500
<u>Funding:</u>						
General Fund	0	5,750	5,750	0	4,250	4,250
Water Rights (02)	0	250	250	0	250	250
Total	0	6,000	6,000	0	4,500	4,500
<u>Revenues:</u>						
Water Rights (02)	0	250	250	0	250	250


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE

2-18-91


ESTHER G. BENGTSON, PRIMARY SPONSOR

DATE

2/19/91

Fiscal Note for SB0386, as introduced

SB 386

APPROVED BY COMM. ON NATURAL RESOURCES

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2 INTRODUCED BY Boughton, Gustafson, T. Beach,
3 Kaylock, M. H. ...
4 Kimberley BY REQUEST OF THE GOVERNOR Welding
Pisano

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 3 *Raylock* *11.11.11* BY REQUEST OF THE GOVERNOR *Welding*
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There are no changes in this bill,
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