



APRIL 18, 1991

CONCURRED IN.

THIRD READING, AMENDMENTS  
CONCURRED IN.

APRIL 19, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

*Senate* BILL NO. 401

1  
 2 INTRODUCED BY *Senator W. J. ...*  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE  
 5 DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"; ENABLING THE  
 6 BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO REVIEW A  
 7 PUBLIC WATER SUPPLY SYSTEM OR PUBLIC SEWAGE SYSTEM TO  
 8 DETERMINE IF THAT SYSTEM HAS THE FINANCIAL CAPABILITY TO  
 9 COMPLY WITH THE PUBLIC WATER SUPPLY LAWS; DESCRIBING A  
 10 PROCESS TO BE USED BY THE DEPARTMENT OF HEALTH AND  
 11 ENVIRONMENTAL SCIENCES TO ADMINISTRATIVELY ENFORCE THE LAWS  
 12 PROTECTING PUBLIC WATER SUPPLIES; PROVIDING AN  
 13 ADMINISTRATIVE PENALTY AND CIVIL PENALTY FOR VIOLATION OF  
 14 PUBLIC WATER SUPPLY LAWS OR OF A RULE, ORDER, OR CONDITION  
 15 OF APPROVAL ISSUED UNDER THOSE LAWS; PROVIDING FOR  
 16 ASSESSMENT OF FEES ESTABLISHED THROUGH RULEMAKING TO RECOVER  
 17 COSTS OF DEPARTMENT SERVICES UNDER THE LAWS RELATING TO  
 18 PUBLIC WATER SUPPLIES AND TO SANITATION IN SUBDIVISIONS;  
 19 ESTABLISHING A PUBLIC DRINKING WATER SPECIAL REVENUE FUND TO  
 20 RECEIVE REVENUES FROM FEES, ADMINISTRATIVE PENALTIES, AND  
 21 CIVIL PENALTIES RECEIVED PURSUANT TO THIS ACT; ESTABLISHING  
 22 A SANITATION IN SUBDIVISIONS SPECIAL REVENUE ACCOUNT TO  
 23 RECEIVE REVENUES FROM FEES RECEIVED PURSUANT TO THIS ACT;  
 24 AMENDING SECTIONS 75-6-102, 75-6-103, 75-6-104, 75-6-111,  
 25 AND 76-4-105, MCA; AND PROVIDING AN EFFECTIVE DATE."

*Hayden Howard Maguire*

1  
 2 STATEMENT OF INTENT  
 3 A statement of intent is provided for this bill because  
 4 rulemaking authority is delegated to the board of health and  
 5 environmental sciences to prescribe procedures for  
 6 administrative enforcement actions undertaken by the  
 7 department of health and environmental sciences in  
 8 administering the public water supply laws, as provided in  
 9 Title 75, chapter 6, and to develop a fee schedule to enable  
 10 the department to recover costs in administering these laws.  
 11 Rulemaking authority is also delegated to the department to  
 12 develop fees to pay for costs of reviewing plats and  
 13 subdivisions under the laws related to sanitation in  
 14 subdivisions, as provided in Title 76, chapter 4.  
 15 The legislature anticipates that the department will  
 16 expand its enforcement activity in order to address ongoing  
 17 and increasing health problems with public water supply  
 18 systems and public sewage systems in Montana. In undertaking  
 19 this effort, the legislature expects that the department  
 20 will have the option to pursue administrative enforcement as  
 21 a means of expediting and encouraging compliance with Title  
 22 75, chapter 6. Nonetheless, it is the department's duty to  
 23 clearly inform each violator of:  
 24 (1) the nature of the action taken against it;  
 25 (2) what the department requires to resolve the matter;



-2- INTRODUCED BILL  
SB 407

1 and

2 (3) what legal avenues are available to the violator if  
3 he desires to contest the matter.

4 The rules also require the board of health and  
5 environmental sciences to develop fees for recovery of costs  
6 incurred by the department in delivering services to persons  
7 who own or operate or intend to own or operate a public  
8 water supply system or public sewage system. These costs  
9 include costs associated with review of engineering plans  
10 and specifications, inspections, and general assistance. To  
11 assist the board in developing these rules, the department  
12 shall prepare and submit to the board a detailed estimate of  
13 projected costs associated with these services for fiscal  
14 years 1992 and 1993. The board shall develop a fee schedule  
15 that will provide revenues that are commensurate with the  
16 projected costs. A similar approach should be used by the  
17 department in developing rules setting new fees for review  
18 of plats and subdivisions under 76-4-105.

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

21 **Section 1.** Section 75-6-102, MCA, is amended to read:

22 "75-6-102. Definitions. As used in this part, unless  
23 the context clearly indicates otherwise, the following  
24 definitions apply:

25 (1) "Board" means the board of health and environmental

1 sciences provided for in 2-15-2104.

2 (2) "Contamination" means impairment of the quality of  
3 state waters by sewage, industrial wastes, or other wastes  
4 creating a hazard to human health.

5 (3) "Department" means the department of health and  
6 environmental sciences provided for in Title 2, chapter 15,  
7 part 21.

8 (4) "Drainage" means rainfall, surface, and subsoil  
9 water.

10 (5) "Industrial waste" means any waste substance from  
11 the processes of business or industry or from the  
12 development of any natural resource, together with any  
13 sewage that may be present.

14 (6) "Maximum contaminant level" means the maximum  
15 permissible level of a contaminant in water which is  
16 delivered to any user of a public water supply system.

17 (7) "Other waste" means garbage, municipal refuse,  
18 decayed wood, sawdust, shavings, bark, lime, sand, ashes,  
19 offal, night soil, oil, grease, tar, heat, chemicals, dead  
20 animals, sediment, wrecked or discarded equipment,  
21 radioactive materials, solid waste, and all other substances  
22 that may pollute state waters.

23 (8) "Person" means any individual, corporation,  
24 association, partnership, municipality, other political  
25 subdivision of the state, or federal agency.

1 (9) "Pollution" means contamination or other alteration  
 2 of the physical, chemical, or biological properties of any  
 3 state waters which exceeds that permitted by Montana water  
 4 quality standards, including but not limited to standards  
 5 relating to change in temperature, taste, color, turbidity,  
 6 or odor or the discharge or introduction of any liquid,  
 7 gaseous, solid, radioactive, or other substance into any  
 8 state water which will or is likely to create a nuisance or  
 9 render the waters harmful, detrimental, or injurious to  
 10 public health, recreation, safety, welfare, livestock, wild  
 11 animals, birds, fish, or other wildlife. A discharge which  
 12 is authorized under the pollution discharge permit rules of  
 13 the board is not pollution under this chapter.

14 (10) "Public sewage system" means a system of  
 15 collection, transportation, treatment, or disposal of sewage  
 16 that is designed to serve or serves 10 or more families or  
 17 25 or more persons daily for a period of at least 60 days  
 18 out of the calendar year.

19 (11) "Public water supply system" means a system for the  
 20 provision of water for human consumption from any community  
 21 well, water hauler for cisterns, water bottling plant, water  
 22 dispenser, or other water supply that is designed to serve  
 23 or serves 10 or more families or 25 or more persons daily or  
 24 has at least 10 service connections at least 60 days out of  
 25 the calendar year.

1 (12) "Safe Drinking Water Act" means 42 U.S.C. 300f and  
 2 regulations at Title 40, CFR, Parts 141 and 142.

3 (13) "Sewage" means water-carried waste products from  
 4 residences, public buildings, institutions, or other  
 5 buildings, including discharge from human beings, together  
 6 with ground water infiltration and surface water present.

7 (14) "State waters" means any body of water, irrigation  
 8 system, or drainage system, either surface or underground."

9 **Section 2.** Section 75-6-103, MCA, is amended to read:

10 "75-6-103. Duties of the board. (1) The board has  
 11 general supervision over all state waters which are directly  
 12 or indirectly being used by a person for a public water  
 13 supply system or domestic purposes or as a source of ice.

14 (2) The board shall adopt rules and standards  
 15 concerning:

16 (a) maximum contaminant levels for waters that are or  
 17 will be used for a public water supply system;

18 (b) fees, as described in [section 4], for services  
 19 rendered by the department ~~in-conducting-inspections~~;

20 (c) monitoring, recordkeeping, and reporting by persons  
 21 who own or operate a public water supply system;

22 (d) requiring public notice to all users of a public  
 23 water supply system when a person has been granted a  
 24 variance or exemption or is in violation of this part or a  
 25 rule or order issued pursuant to this part;

1 (e) the issuance of licenses by the department to  
2 laboratories that conduct analysis of public water supply  
3 systems;

4 (f) the siting, construction, operation, and  
5 modification of a public water supply system or public  
6 sewage system;

7 (g) the review of financial viability of a proposed  
8 public water supply system or public sewage system, as  
9 necessary to ensure the capability of the system to meet the  
10 requirements of this part;

11 ~~(g)~~(h) the collection and analysis of samples of water  
12 used for drinking or domestic purposes;

13 ~~(h)~~(i) the issuance of variances and exemptions as  
14 authorized by the federal Safe Drinking Water Act and this  
15 part; and

16 (j) administrative enforcement procedures and  
17 administrative penalties authorized under this part; and

18 ~~(i)~~(k) any other requirement necessary for the  
19 protection of public health as described in this part.

20 (3) The board may issue orders necessary to fully  
21 implement the provisions of this part."

22 **Section 3.** Section 75-6-104, MCA, is amended to read:

23 "75-6-104. Duties of department. The department shall:

24 (1) upon its own initiative or complaint to the  
25 department, to the mayor or health officer of a

1 municipality, or to the managing board or officer of a  
2 public institution, make an investigation of alleged  
3 pollution of a water supply system and, if required,  
4 prohibit the continuance of the pollution by ordering  
5 removal of the cause of pollution;

6 (2) have waters examined to determine their quality and  
7 the possibility that they may endanger public health;

8 (3) consult and advise authorities of cities and towns  
9 and persons having or about to construct systems for water  
10 supply, drainage, wastewater, and sewage as to the most  
11 appropriate source of water supply and the best method of  
12 assuring its quality;

13 (4) advise persons as to the best method of treating  
14 and disposing of their drainage, sewage, or wastewater with  
15 reference to the existing and future needs of other persons  
16 and to prevent pollution;

17 (5) consult with persons engaged in or intending to  
18 engage in manufacturing or other business whose drainage or  
19 sewage may tend to pollute waters as to the best method of  
20 preventing pollution;

21 (6) collect fees, as described in [section 4], for  
22 services rendered--in--analyzing--water---and---conducting  
23 inspections--to--cover--costs-of-the-service and deposit the  
24 fees collected in the state public drinking water special  
25 revenue fund for--use--by--the--department established in

1 [section 8];

2 (7) establish and maintain experiment stations and  
3 conduct experiments to study the best methods of treating  
4 water, drainage, wastewater, sewage, and industrial waste to  
5 prevent pollution, including investigation of methods used  
6 in other states;

7 (8) enter on premises at reasonable times to determine  
8 sources of pollution or danger to water supply systems and  
9 whether rules and standards of the board are being obeyed;

10 (9) enforce and administer the provisions of this part;

11 (10) establish a plan for the provision of safe drinking  
12 water under emergency circumstances;

13 (11) maintain an inventory of public water supply  
14 systems and establish a program for conducting sanitary  
15 surveys; and

16 (12) enter into agreements with local boards of health  
17 wherever appropriate for the performance of surveys and  
18 inspections under the provisions of this part."

19 NEW SECTION. Section 4. Board to prescribe fees. (1)  
20 The board shall by rule prescribe fees to be assessed  
21 annually by the department on owners of public water supply  
22 systems to recover department costs in providing services  
23 under this part. The annual fee for a public water supply  
24 system must be based on the number of connections to the  
25 public water supply system, although the minimum fee for any

1 system is \$100.

2 (2) The board shall by rule prescribe fees to be  
3 assessed by the department on persons who submit plans and  
4 specifications for construction, alteration, or extension of  
5 a public water supply system or public sewage system. The  
6 fees must be commensurate with the cost to the department of  
7 reviewing the plans and specifications.

8 (3) Fees collected pursuant to this section must be  
9 deposited in the public drinking water special revenue fund  
10 established in [section 8].

11 **Section 5.** Section 75-6-111, MCA, is amended to read:

12 "75-6-111. **Appeal from rule or standard -- injunction**  
13 **to require compliance.** (1) A person aggrieved by a rule,  
14 standard, or order adopted or issued pursuant to this part  
15 may appeal to the district court, except as otherwise  
16 provided in [section 6]. While the appeal is pending, the  
17 rule, standard, or order is in force.

18 (2) The department may seek an injunction from the  
19 appropriate district court to require compliance with this  
20 part or a rule or order issued as authorized by this part.  
21 The court may award the department costs and expenses  
22 incurred in investigating and abating the violation. The  
23 department may also initiate an action to collect a criminal  
24 penalty as provided in 75-6-113 or a civil penalty as  
25 provided in [section 7]."

1 NEW SECTION. Section 6. Administrative enforcement.

2 (1) If the department believes that a violation of this  
3 part, a rule adopted under this part, or a condition of  
4 approval issued under this part has occurred, it may serve  
5 written notice of the violation, by certified mail, on the  
6 alleged violator or his agent. The notice must specify the  
7 provision of this part, the rule, or the condition of  
8 approval alleged to have been violated and the facts alleged  
9 to constitute a violation. The notice must include an order  
10 to take necessary corrective action within a reasonable  
11 period of time, which must be stated in the order. Service  
12 by mail is complete on the date of filing.

13 (2) If the alleged violator does not request a hearing  
14 before the board within 30 days of the date of service, the  
15 order becomes final. Failure to comply with a final order  
16 may subject the violator to an action commenced pursuant to  
17 75-6-104, 75-6-113, or [section 7].

18 (3) If the alleged violator requests a hearing before  
19 the board within 30 days of the date of service, the board  
20 shall schedule a hearing. After the hearing is held, the  
21 board may:

22 (a) affirm or modify the department's order issued  
23 under subsection (1) if the board finds that a violation has  
24 occurred; or

25 (b) rescind the department's order if the board finds

1 that a violation has not occurred.

2 (4) An order issued by the department or the board may  
3 set a date by which the violation must cease and set a time  
4 limit for action to correct a violation.

5 (5) As an alternative to issuing an order pursuant to  
6 subsection (1), the department may:

7 (a) require the alleged violator to appear before the  
8 board for a hearing, at a time and place specified in the  
9 notice, to answer the charges complained of; or

10 (b) initiate an action under 75-6-111(2), 75-6-113, or  
11 [section 7].

12 (6) An action initiated under this part may include an  
13 administrative penalty not to exceed \$1,000 for each day of  
14 violation. Administrative penalties collected under this  
15 section must be deposited in the public drinking water  
16 special revenue fund established in [section 8].

17 NEW SECTION. Section 7. Civil penalty. (1) A person  
18 who violates this part or a rule, order, or condition of  
19 approval issued under this part is subject to a civil  
20 penalty not to exceed \$10,000.

21 (2) Each day of violation constitutes a separate  
22 violation.

23 (3) Action under this section does not bar enforcement  
24 of this part or a rule, order, or condition of approval  
25 issued under this part by injunction or other appropriate



1 remedy.

2 (4) Civil penalties collected pursuant to this section  
3 must be deposited in the public drinking water special  
4 revenue fund established in [section 8].

5 NEW SECTION. **Section 8.** Public drinking water special  
6 revenue fund. (1) There is a public drinking water special  
7 revenue fund within the state special revenue fund  
8 established in 17-2-102. There are established in the public  
9 drinking water special revenue fund an operator training  
10 account and a public drinking water program account.

11 (2) There must be credited to:

12 (a) the operator training account all administrative  
13 and civil penalties collected under [sections 6 and 7]; and

14 (b) the public drinking water program account, all  
15 revenues from fees assessed and collected pursuant to  
16 [section 4].

17 (3) Funds from the operator training account may be  
18 used only to finance public water supply system and public  
19 sewage system operator training programs.

20 (4) Funds from the public drinking water program  
21 account may be used only to pay department costs in  
22 implementing the public drinking water supply program, as  
23 described in this part.

24 **Section 9.** Section 76-4-105, MCA, is amended to read:

25 "76-4-105. Lot fees -- general fund support. (1) The

1 department shall adopt rules setting forth fees, that do not  
2 to exceed \$40-per-parcel, for-services-rendered-in-the  
3 review-of actual costs to the department in reviewing plats  
4 and subdivisions. The rules shall provide for a schedule of  
5 fees to be paid by the applicant for plat or subdivision  
6 review to the department for deposit in the state-general  
7 fund sanitation in subdivisions special revenue account  
8 established in [section 10] or, if applicable, to another  
9 reviewing authority for deposit in the general fund of the  
10 reviewing authority's jurisdiction. The fees shall be used  
11 for review of plats and subdivisions based on the complexity  
12 of the subdivision, including but not limited to:

13 (a) number of lots in the subdivision;

14 (b) the type of water system to serve the development;

15 (c) the type of sewage disposal to serve the  
16 development; and

17 (d) the degree of environmental research necessary to  
18 supplement the review procedure.

19 (2) The department shall adopt rules to determine the  
20 distribution of fees between the local governing body and  
21 the state-general-fund sanitation in subdivisions special  
22 revenue account established in [section 10], as provided in  
23 76-4-128. When a subdivision is reviewed under the  
24 provisions of 76-4-124, the local governing body shall,  
25 within 20 days after receiving preliminary plat approval

1 under the Montana Subdivision and Platting Act, distribute  
2 the lot fees according to the fee schedule adopted under  
3 this section.

4 (3) When a local department or board of health conducts  
5 a review under the provisions of 76-4-104, it shall submit  
6 to the department, along with its approval statement, a fee  
7 of \$5 per reviewed lot, for purposes of offsetting costs  
8 incurred in providing certification to a local reviewing  
9 authority and other administrative costs.

10 (4) A fee as described in this section is not required  
11 for the review of subdivisions in which divisions are made  
12 for the purpose of relocating common boundary lines unless  
13 the division will result in the installation of additional  
14 water supply or sewage disposal facilities.

15 (5) Costs of implementing this part must be paid from  
16 the state general fund as provided by legislative  
17 appropriation and from the sanitation in subdivisions  
18 special revenue account established in [section 10]."

19 **NEW SECTION. Section 10.** Sanitation in subdivisions  
20 special revenue account. (1) There is a sanitation in  
21 subdivisions special revenue account within the state  
22 special revenue fund established in 17-2-102.

23 (2) There must be credited to the sanitation in  
24 subdivision special revenue account all fees collected under  
25 76-4-105 and all penalties collected under 76-4-109.

1 (3) Funds from the sanitation in subdivisions special  
2 revenue account may be used only to pay department costs in  
3 reviewing plats and subdivisions.

4 **NEW SECTION. Section 11.** Codification instruction. (1)  
5 [Sections 4, 6, 7, and 8] are intended to be codified as an  
6 integral part of Title 75, chapter 6, part 1, and the  
7 provisions of Title 75, chapter 6, part 1, apply to  
8 [sections 4, 6, 7, and 8].

9 (2) [Section 10] is intended to be codified as an  
10 integral part of Title 76, chapter 4, and the provisions of  
11 Title 76, chapter 4, apply to [section 10].

12 **NEW SECTION. Section 12.** Effective date. [This act] is  
13 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0407, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

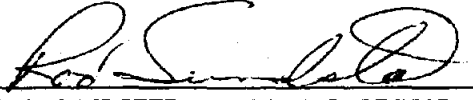
A bill generally revising the laws regarding public water supply systems and the duties of the Department of Health and Environmental Sciences; providing for assessment of fees relating to public water supplies and to sanitation in subdivisions; and establishing public drinking water and sanitation in subdivisions special revenue accounts.

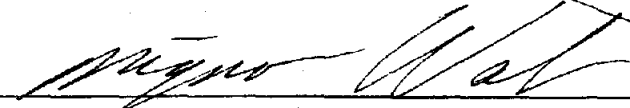
ASSUMPTIONS:

1. A fee of \$3.00 per water service connection per year would be assessed to water supply systems with a minimum fee of \$100 assessed for public water systems with less than 33 connections. Total revenue generated would be approximately \$600,000 per year.
2. A fee of \$500 would be charged for engineering review of approximately 250 sets of plans and specifications, generating approximately \$125,000 per year.
3. Approximately \$10,000 per year would be collected in administrative and civil penalties.
4. 1.00 FTE (grade 9, step 2) would be required for processing and collection of fees from approximately 2,100 public water supply systems. This FTE was requested in the executive budget and was approved in appropriations subcommittee action to date.
5. The department intends to draft rules which would increase the existing subdivision review fees by approximately 200%, covering approximately 75% of program costs as requested in the executive budget. Grants to counties for subdivision review would be increased by 200%.

FISCAL IMPACT:

see next page

  
ROD SUNDSTED, BUDGET DIRECTOR      2-22-91  
Office of Budget and Program Planning      DATE

  
MIGNON WATERMAN, PRIMARY SPONSOR      2/26/91  
DATE

Fiscal Note for SB0407, as introduced.

SB407

FISCAL IMPACT:

Department of Health and Environmental Sciences:

	FY92			FY93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	0.00	1.00	1.00	0.00	1.00	1.00
Personal Services	0	19,947	19,947	0	19,903	19,903
Operating Expenses	0	6,000	6,000	0	6,000	6,000
Grants	<u>45,000</u>	<u>90,000</u>	<u>45,000</u>	<u>45,000</u>	<u>90,000</u>	<u>45,000</u>
Total	45,000	115,947	70,947	45,000	115,903	70,903
<u>Funding:</u>						
General Fund	45,000	90,000	45,000	45,000	90,000	45,000
Public Water Fees (02)	<u>0</u>	<u>25,947</u>	<u>25,947</u>	<u>0</u>	<u>25,903</u>	<u>25,903</u>
Total	45,000	115,947	70,947	45,000	115,903	70,903
<u>Revenues:</u>						
Public Drinking Water Fees (02)	0	735,000	735,000	0	735,000	735,000
Subdivision Review Fees (02)	<u>86,500</u>	<u>173,000</u>	<u>86,500</u>	<u>86,500</u>	<u>173,000</u>	<u>86,500</u>
Total	86,500	908,000	821,500	86,500	908,000	821,500
Impact to General Fund			(45,000)			(45,000)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

DHES grants to local departments of health for subdivision review would increase from \$45,000 per year to \$90,000.

TECHNICAL NOTES:

SB0407 would deposit fees collected for subdivision review to a special revenue account. The appropriation for the subdivision review program, as requested in the executive budget and as approved in appropriations subcommittee action to date, is from the general fund. To the extent that a special revenue account is created for subdivision review fees, the program appropriation should be from the special revenue account.

Subdivision review fees are currently deposited to the general fund from which the subdivision review program is then appropriated due to the volatility of subdivision review fee collection and the need to provide stable funding for the program. SB0407 has been introduced at the request of the Department of Health and Environmental Sciences. The intent of the department may have been for subdivision fees to continue to be deposited to the general fund rather than the creation of a new special revenue account.

APPROVED BY COMM.  
ON LOCAL GOVERNMENT

1 SENATE BILL NO. 407  
 2 INTRODUCED BY WATERMAN, O'KEEFE, J. RICE. HARPER,  
 3 GERVAIS, MAZUREK  
 4 BY REQUEST OF THE DEPARTMENT OF HEALTH AND  
 5 ENVIRONMENTAL SCIENCES  
 6

7 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE  
 8 DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"; ENABLING THE  
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 20 COSTS OF DEPARTMENT SERVICES UNDER THE LAWS RELATING TO  
 21 PUBLIC WATER SUPPLIES AND TO SANITATION IN SUBDIVISIONS;  
 22 PROVIDING FOR APPEAL OF THE FEE ASSESSMENT; ALLOWING A  
 23 MUNICIPALITY TO RAISE WATER RATES TO COVER COSTS ASSOCIATED  
 24 WITH FEES WITHOUT A PUBLIC HEARING; ESTABLISHING A PUBLIC  
 25 DRINKING WATER SPECIAL REVENUE FUND TO RECEIVE REVENUES FROM

1 FEES, ADMINISTRATIVE PENALTIES, AND CIVIL PENALTIES RECEIVED  
 2 PURSUANT TO THIS ACT; ~~ESTABLISHING---A---SANITATION---IN~~  
 3 ~~SUBDIVISIONS--SPECIAL--REVENUE--ACCOUNT--TO--RECEIVE--REVENUES~~  
 4 ~~FROM--FEES--RECEIVED--PURSUANT--TO--THIS--ACT,~~ AND AMENDING  
 5 SECTIONS 69-7-111, 75-6-102, 75-6-103, 75-6-104, 75-6-111,  
 6 ~~AND 76-4-105, MCA,~~ ~~AND PROVIDING AN EFFECTIVE DATE."~~

STATEMENT OF INTENT

9 A statement of intent is provided for this bill because  
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 15 Title 75, chapter 6, and to develop a fee schedule to enable  
 16 the department to recover costs in administering these laws.  
 17 Rulemaking authority is also delegated to the department to  
 18 develop fees to pay for costs of reviewing plats and  
 19 subdivisions under the laws related to sanitation in  
 20 subdivisions, as provided in Title 76, chapter 4. IT IS THE  
 21 INTENT OF THE LEGISLATURE THAT THE RULES ESTABLISH A  
 22 REASONABLE FEE SCHEDULE THAT APPROXIMATES THE DEPARTMENT'S  
 23 ACTUAL AND NECESSARY COSTS.

24 The legislature anticipates that the department will  
 25 expand its enforcement activity in order to address ongoing

1 and increasing health problems with public water supply  
 2 systems and public sewage systems in Montana. In undertaking  
 3 this effort, the legislature expects that the department  
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 7 clearly inform each violator of:

- 8 (1) the nature of the action taken against it;  
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 11 (3) what legal avenues are available to the violator if  
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13 THE LEGISLATURE RECOGNIZES THAT AN ECONOMIC HARDSHIP MAY  
 14 BE IMPOSED ON A PUBLIC WATER SUPPLY SYSTEM IN ORDER FOR THAT  
 15 SYSTEM TO BE BROUGHT INTO COMPLIANCE WITH STATE AND FEDERAL  
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1 The rules also require the board of health and  
 2 environmental sciences to develop fees for recovery of costs  
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 5 water supply system or public sewage system. These costs  
 6 include costs associated with review of engineering plans  
 7 and specifications, inspections, and general assistance. To  
 8 assist the board in developing these rules, the department  
 9 shall prepare and submit to the board a detailed estimate of  
 10 projected costs associated with these services for fiscal  
 11 years 1992 and 1993. The board shall develop a fee schedule  
 12 that will provide revenues that are commensurate with the  
 13 projected costs. A similar approach should be used by the  
 14 department in developing rules setting new fees for review  
 15 of plats and subdivisions under 76-4-105.

16  
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 **Section 1.** Section 75-6-102, MCA, is amended to read:

19 "75-6-102. **Definitions.** As used in this part, unless  
 20 the context clearly indicates otherwise, the following  
 21 definitions apply:

- 22 (1) "Board" means the board of health and environmental  
 23 sciences provided for in 2-15-2104.  
 24 (2) "Contamination" means impairment of the quality of  
 25 state waters by sewage, industrial wastes, or other wastes

1 creating a hazard to human health.

2 (3) "Department" means the department of health and  
3 environmental sciences provided for in Title 2, chapter 15,  
4 part 21.

5 (4) "Drainage" means rainfall, surface, and subsoil  
6 water.

7 (5) "Industrial waste" means any waste substance from  
8 the processes of business or industry or from the  
9 development of any natural resource, together with any  
10 sewage that may be present.

11 (6) "Maximum contaminant level" means the maximum  
12 permissible level of a contaminant in water which is  
13 delivered to any user of a public water supply system.

14 (7) "Other waste" means garbage, municipal refuse,  
15 decayed wood, sawdust, shavings, bark, lime, sand, ashes,  
16 offal, night soil, oil, grease, tar, heat, chemicals, dead  
17 animals, sediment, wrecked or discarded equipment,  
18 radioactive materials, solid waste, and all other substances  
19 that may pollute state waters.

20 (8) "Person" means any individual, corporation,  
21 association, partnership, municipality, other political  
22 subdivision of the state, or federal agency.

23 (9) "Pollution" means contamination or other alteration  
24 of the physical, chemical, or biological properties of any  
25 state waters which exceeds that permitted by Montana water

1 quality standards, including but not limited to standards  
2 relating to change in temperature, taste, color, turbidity,  
3 or odor or the discharge or introduction of any liquid,  
4 gaseous, solid, radioactive, or other substance into any  
5 state water which will or is likely to create a nuisance or  
6 render the waters harmful, detrimental, or injurious to  
7 public health, recreation, safety, welfare, livestock, wild  
8 animals, birds, fish, or other wildlife. A discharge which  
9 is authorized under the pollution discharge permit rules of  
10 the board is not pollution under this chapter.

11 (10) "Public sewage system" means a system of  
12 collection, transportation, treatment, or disposal of sewage  
13 that is designed to serve or serves 10 or more families or  
14 25 or more persons daily for a period of at least 60 days  
15 out of the calendar year.

16 (11) "Public water supply system" means a system for the  
17 provision of water for human consumption from any community  
18 well, water hauler for cisterns, water bottling plant, water  
19 dispenser, or other water supply that is designed to serve  
20 or serves 10 or more families or 25 or more persons daily or  
21 has at least 10 service connections at least 60 days out of  
22 the calendar year.

23 (12) "Safe Drinking Water Act" means 42 U.S.C. 300f and  
24 regulations at Title 40, CFR, Parts 141 and 142.

25 (13) "Sewage" means water-carried waste products from

1 residences, public buildings, institutions, or other  
2 buildings, including discharge from human beings, together  
3 with ground water infiltration and surface water present.

4 (14) "State waters" means any body of water, irrigation  
5 system, or drainage system, either surface or underground."

6 **Section 2.** Section 75-6-103, MCA, is amended to read:

7 **"75-6-103. Duties of the board.** (1) The board has  
8 general supervision over all state waters which are directly  
9 or indirectly being used by a person for a public water  
10 supply system or domestic purposes or as a source of ice.

11 (2) The board shall adopt rules and standards  
12 concerning:

13 (a) maximum contaminant levels for waters that are or  
14 will be used for a public water supply system;

15 (b) fees, as described in [section 4], for services  
16 rendered by the department ~~in-conducting-inspections~~;

17 (c) monitoring, recordkeeping, and reporting by persons  
18 who own or operate a public water supply system;

19 (d) requiring public notice to all users of a public  
20 water supply system when a person has been granted a  
21 variance or exemption or is in violation of this part or a  
22 rule or order issued pursuant to this part;

23 (e) the issuance of licenses by the department to  
24 laboratories that conduct analysis of public water supply  
25 systems;

1 (f) the siting, construction, operation, and  
2 modification of a public water supply system or public  
3 sewage system;

4 (g) the review of financial viability of a proposed  
5 public water supply system or public sewage system, as  
6 necessary to ensure the capability of the system to meet the  
7 requirements of this part;

8 ~~(g)~~(h) the collection and analysis of samples of water  
9 used for drinking or domestic purposes;

10 ~~(h)~~(i) the issuance of variances and exemptions as  
11 authorized by the federal Safe Drinking Water Act and this  
12 part; and

13 (j) administrative enforcement procedures and  
14 administrative penalties authorized under this part; and

15 ~~(i)~~(k) any other requirement necessary for the  
16 protection of public health as described in this part.

17 (3) The board may issue orders necessary to fully  
18 implement the provisions of this part."

19 **Section 3.** Section 75-6-104, MCA, is amended to read:

20 **"75-6-104. Duties of department.** The department shall:

21 (1) upon its own initiative or complaint to the  
22 department, to the mayor or health officer of a  
23 municipality, or to the managing board or officer of a  
24 public institution, make an investigation of alleged  
25 pollution of a water supply system and, if required,



1 prohibit the continuance of the pollution by ordering  
2 removal of the cause of pollution;

3 (2) have waters examined to determine their quality and  
4 the possibility that they may endanger public health;

5 (3) consult and advise authorities of cities and towns  
6 and persons having or about to construct systems for water  
7 supply, drainage, wastewater, and sewage as to the most  
8 appropriate source of water supply and the best method of  
9 assuring its quality;

10 (4) advise persons as to the best method of treating  
11 and disposing of their drainage, sewage, or wastewater with  
12 reference to the existing and future needs of other persons  
13 and to prevent pollution;

14 (5) consult with persons engaged in or intending to  
15 engage in manufacturing or other business whose drainage or  
16 sewage may tend to pollute waters as to the best method of  
17 preventing pollution;

18 (6) collect fees, as described in [section 4], for  
19 services rendered---in---analyzing--water--and--conducting  
20 inspections-to-cover-costs-of-the-service and deposit the  
21 fees collected in the state public drinking water special  
22 revenue fund for--use--by--the--department established in  
23 [section 8];

24 (7) establish and maintain experiment stations and  
25 conduct experiments to study the best methods of treating

1 water, drainage, wastewater, sewage, and industrial waste to  
2 prevent pollution, including investigation of methods used  
3 in other states;

4 (8) enter on premises at reasonable times to determine  
5 sources of pollution or danger to water supply systems and  
6 whether rules and standards of the board are being obeyed;

7 (9) enforce and administer the provisions of this part;

8 (10) establish a plan for the provision of safe drinking  
9 water under emergency circumstances;

10 (11) maintain an inventory of public water supply  
11 systems and establish a program for conducting sanitary  
12 surveys; and

13 (12) enter into agreements with local boards of health  
14 wherever appropriate for the performance of surveys and  
15 inspections under the provisions of this part."

16 NEW SECTION. Section 4. Board to prescribe fees --  
17 OPPORTUNITY FOR APPEAL. (1) The board shall by rule  
18 prescribe fees to be assessed annually by the department on  
19 owners of public water supply systems to recover department  
20 costs in providing services under this part. The annual fee  
21 for a public water supply system ~~must-be-based-on-the-number~~  
22 ~~of---connections~~ IS NO MORE THAN \$2 FOR EACH SERVICE  
23 CONNECTION to the public water supply system, although the  
24 minimum fee for any system is \$100.

25 (2) PUBLIC OR PRIVATE WATER SUPPLY SYSTEMS IN A

1 MUNICIPALITY MAY RAISE THE RATES TO RECOVER COSTS ASSOCIATED  
 2 WITH THE FEES PRESCRIBED IN THIS SECTION WITHOUT THE PUBLIC  
 3 HEARING REQUIRED IN 69-7-111.

4 †2†(3) The board shall by rule prescribe fees to be  
 5 assessed by the department on persons who submit plans and  
 6 specifications for construction, alteration, or extension of  
 7 a public water supply system or public sewage system. The  
 8 fees must be commensurate with the cost to the department of  
 9 reviewing the plans and specifications.

10 †3†(4) Fees collected pursuant to this section must be  
 11 deposited in the public drinking water special revenue fund  
 12 established in [section 8].

13 (5) (A) THE DEPARTMENT SHALL NOTIFY THE OWNER OF A  
 14 PUBLIC WATER SUPPLY SYSTEM IN WRITING OF THE AMOUNT OF THE  
 15 FEE TO BE ASSESSED AND THE BASIS FOR THE ASSESSMENT. THE  
 16 OWNER MAY APPEAL THE FEE ASSESSMENT IN WRITING TO THE BOARD  
 17 WITHIN 20 DAYS AFTER RECEIPT OF THE WRITTEN NOTICE.

18 (B) AN APPEAL MUST BE BASED ON THE ALLEGATION THAT THE  
 19 FEE IS ERRONEOUS OR EXCESSIVE. AN APPEAL MAY NOT BE BASED  
 20 ONLY ON THE FEE SCHEDULE ADOPTED BY THE BOARD.

21 (C) IF ANY PART OF THE FEE ASSESSMENT IS NOT APPEALED,  
 22 IT MUST BE PAID TO THE DEPARTMENT UPON RECEIPT OF THE NOTICE  
 23 PROVIDED FOR IN SUBSECTION (5)(A).

24 **Section 5.** Section 75-6-111, MCA, is amended to read:

25 \*75-6-111. Appeal from rule or standard -- injunction

1 to require compliance. (1) A person aggrieved by a rule,  
 2 standard, or order adopted or issued pursuant to this part  
 3 may appeal to the district court, except as otherwise  
 4 provided in [section 6]. While the appeal is pending, the  
 5 rule, standard, or order is in force.

6 (2) The department may seek an injunction from the  
 7 appropriate district court to require compliance with this  
 8 part or a rule or order issued as authorized by this part.  
 9 The court may award the department costs and expenses  
 10 incurred in investigating and abating the violation. The  
 11 department may also initiate an action to collect a criminal  
 12 penalty as provided in 75-6-113 or a civil penalty as  
 13 provided in [section 7]."

14 **NEW SECTION. Section 6. Administrative enforcement.**

15 (1) If the department believes that a violation of this  
 16 part, a rule adopted under this part, or a condition of  
 17 approval issued under this part has occurred, it may serve  
 18 written notice of the violation, by certified mail, on the  
 19 alleged violator or his agent. The notice must specify the  
 20 provision of this part, the rule, or the condition of  
 21 approval alleged to have been violated and the facts alleged  
 22 to constitute a violation. The notice must include an order  
 23 to take necessary corrective action within a reasonable  
 24 period of time, which must be stated in the order. Service  
 25 by mail is complete on the date of filing.

1 (2) If the alleged violator does not request a hearing  
2 before the board within 30 days of the date of service, the  
3 order becomes final. Failure to comply with a final order  
4 may subject the violator to an action commenced pursuant to  
5 75-6-104, 75-6-113, or [section 7].

6 (3) If the alleged violator requests a hearing before  
7 the board within 30 days of the date of service, the board  
8 shall schedule a hearing. After the hearing is held, the  
9 board may:

10 (a) affirm or modify the department's order issued  
11 under subsection (1) if the board finds that a violation has  
12 occurred; or

13 (b) rescind the department's order if the board finds  
14 that a violation has not occurred.

15 (4) An order issued by the department or the board may  
16 set a date by which the violation must cease and set a time  
17 limit for action to correct a violation.

18 (5) As an alternative to issuing an order pursuant to  
19 subsection (1), the department may:

20 (a) require the alleged violator to appear before the  
21 board for a hearing, at a time and place specified in the  
22 notice, to answer the charges complained of; or

23 (b) initiate an action under 75-6-111(2), 75-6-113, or  
24 [section 7].

25 (6) An action initiated under this part may include an

1 administrative penalty not to exceed ~~\$17,000~~ \$500 for each  
2 day of violation. Administrative penalties collected under  
3 this section must be deposited in the public drinking water  
4 special revenue fund established in [section 8].

5 (7) THE CONTESTED CASE PROVISIONS OF THE MONTANA  
6 ADMINISTRATIVE PROCEDURE ACT, PROVIDED FOR IN TITLE 2,  
7 CHAPTER 4, PART 6, APPLY TO A HEARING UNDER [SECTION 4] OR  
8 THIS SECTION.

9 NEW SECTION. Section 7. Civil penalty. (1) A person  
10 who violates this part or a rule, order, or condition of  
11 approval issued under this part is subject to a civil  
12 penalty not to exceed \$10,000.

13 (2) Each day of violation constitutes a separate  
14 violation.

15 (3) Action under this section does not bar enforcement  
16 of this part or a rule, order, or condition of approval  
17 issued under this part by injunction or other appropriate  
18 remedy.

19 (4) Civil penalties collected pursuant to this section  
20 must be deposited in the public drinking water special  
21 revenue fund established in [section 8].

22 NEW SECTION. Section 8. Public drinking water special  
23 revenue fund. (1) There is a public drinking water special  
24 revenue fund within the state special revenue fund  
25 established in 17-2-102. There are established in the public

1 drinking water special revenue fund an operator training  
2 account and a public drinking water program account.

3 (2) There must be credited to:

4 (a) the operator training account all administrative  
5 and civil penalties collected under [sections 6 and 7]; and

6 (b) the public drinking water program account, all  
7 revenues from fees assessed and collected pursuant to  
8 [section 4].

9 (3) Funds from the operator training account may be  
10 used only to finance public water supply system and public  
11 sewage system operator training programs.

12 (4) Funds from the public drinking water program  
13 account may be used only to pay department costs in  
14 implementing the public drinking water supply program, as  
15 described in this part.

16 **Section 9.** Section 76-4-105, MCA, is amended to read:

17 "76-4-105. Lot fees -- general fund support. (1) The  
18 department shall adopt rules setting forth fees, that do not  
19 to exceed \$40--per--parcel,--for--services-rendered-in-the  
20 review-of actual costs to the department in reviewing plats  
21 and subdivisions. The rules shall provide for a schedule of  
22 fees to be paid by the applicant for plat or subdivision  
23 review to the department for deposit in the state-general  
24 fund sanitation--in--subdivisions--special--revenue--account  
25 established--in--(section--10) STATE GENERAL FUND or, if

1 applicable, to another reviewing authority for deposit in  
2 the general fund of the reviewing authority's jurisdiction.  
3 The fees shall be used for review of plats and subdivisions  
4 based on the complexity of the subdivision, including but  
5 not limited to:

6 (a) number of lots in the subdivision;

7 (b) the type of water system to serve the development;

8 (c) the type of sewage disposal to serve the  
9 development; and

10 (d) the degree of environmental research necessary to  
11 supplement the review procedure.

12 (2) The department shall adopt rules to determine the  
13 distribution of fees between the local governing body and  
14 the state-general-fund sanitation--in--subdivisions--special  
15 revenue--account--established--in--(section--10) STATE GENERAL  
16 FUND, as provided in 76-4-128. When a subdivision is  
17 reviewed under the provisions of 76-4-124, the local  
18 governing body shall, within 20 days after receiving  
19 preliminary plat approval under the Montana Subdivision and  
20 Platting Act, distribute the lot fees according to the fee  
21 schedule adopted under this section.

22 (3) When a local department or board of health conducts  
23 a review under the provisions of 76-4-104, it shall submit  
24 to the department, along with its approval statement, a fee  
25 of \$5 per reviewed lot, for purposes of offsetting costs

1 incurred in providing certification to a local reviewing  
2 authority and other administrative costs.

3 (4) A fee as described in this section is not required  
4 for the review of subdivisions in which divisions are made  
5 for the purpose of relocating common boundary lines unless  
6 the division will result in the installation of additional  
7 water supply or sewage disposal facilities.

8 (5) Costs of implementing this part must be paid from  
9 the state general fund as provided by legislative  
10 appropriation ~~and from the sanitation in subdivisions~~  
11 ~~special revenue account established in section 10.~~"

12 NEW SECTION. Section 10. Sanitation in subdivisions  
13 special revenue account. (1) There is a sanitation in  
14 subdivisions special revenue account within the state  
15 special revenue fund established in 17-2-102.

16 ~~(2) There must be credited to the sanitation in~~  
17 ~~subdivision special revenue account all fees collected under~~  
18 ~~76-4-105 and all penalties collected under 76-4-109.~~

19 ~~(3) Funds from the sanitation in subdivisions special~~  
20 ~~revenue account may be used only to pay department costs in~~  
21 ~~reviewing plats and subdivisions.~~

22 SECTION 10. SECTION 69-7-111, MCA, IS AMENDED TO READ:  
23 "69-7-111. Municipal rate hearing required -- notice.  
24 (1) If Except as provided in [section 4], if the governing  
25 body of a municipality considers it advisable to regulate,

1 establish, or change rates, charges, or classifications  
2 imposed on its customers, it shall order a hearing to be  
3 held before it at a time and place specified.

4 (2) Notice of the hearing shall be published in a  
5 newspaper as provided in 7-1-4127.

6 (3) (a) The notice shall be published three times with  
7 at least 6 days separating each publication. The first  
8 publication may be no more than 28 days prior to the  
9 hearing, and the last publication may be no less than 3 days  
10 prior to the hearing.

11 (b) The notice must also be mailed at least 7 days and  
12 not more than 30 days prior to the hearing to persons served  
13 by the utility. The notice must be mailed within the  
14 prescribed time period. This notice must contain an estimate  
15 of the amount the customer's average bill will increase.

16 (4) The published notice must contain:

17 (a) the date, time, and place of the hearing;

18 (b) a brief statement of the proposed action; and

19 (c) the address and telephone number of a person who  
20 may be contacted for further information regarding the  
21 hearing.

22 (5) Notice of all hearings shall be mailed first class,  
23 postage prepaid, to the Montana consumer counsel."

24 NEW SECTION. Section 11. Codification instruction. (1)  
25 [Sections 4, 6, 7, and 8] are intended to be codified as an

SB 0407/02

1 integral part of Title 75, chapter 6, part 1, and the  
2 provisions of Title 75, chapter 6, part 1, apply to  
3 [sections 4, 6, 7, and 8].

4 ~~{2}--{Section-10} is intended to be codified as an~~  
5 ~~integral part of Title 76, chapter 4, and the provisions of~~  
6 ~~Title 76, chapter 4, apply to {section-10}.~~

7 ~~NEW SECTION.--Section 12.--Effective date: {This act} is~~  
8 ~~effective July 1, 1991.~~

-End-

SENATE BILL NO. 407

INTRODUCED BY WATERMAN, O'KEEFE, J. RICE, HARPER,

GERVAIS, MAZUREK

BY REQUEST OF THE DEPARTMENT OF HEALTH AND

ENVIRONMENTAL SCIENCES

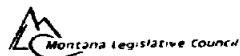
A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"; ENABLING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO REVIEW A PUBLIC WATER SUPPLY SYSTEM OR PUBLIC SEWAGE SYSTEM TO DETERMINE IF THAT SYSTEM HAS THE FINANCIAL CAPABILITY TO COMPLY WITH THE PUBLIC WATER SUPPLY LAWS; DESCRIBING A PROCESS TO BE USED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTRATIVELY ENFORCE THE LAWS PROTECTING PUBLIC WATER SUPPLIES; PROVIDING AN ADMINISTRATIVE PENALTY AND CIVIL PENALTY FOR VIOLATION OF PUBLIC WATER SUPPLY LAWS OR OF A RULE, ORDER, OR CONDITION OF APPROVAL ISSUED UNDER THOSE LAWS; PROVIDING FOR ASSESSMENT OF FEES ESTABLISHED THROUGH RULEMAKING TO RECOVER COSTS OF DEPARTMENT SERVICES UNDER THE LAWS RELATING TO PUBLIC WATER SUPPLIES AND TO SANITATION IN SUBDIVISIONS; PROVIDING FOR APPEAL OF THE FEE ASSESSMENT; ALLOWING A MUNICIPALITY TO RAISE WATER RATES TO COVER COSTS ASSOCIATED WITH FEES WITHOUT A PUBLIC HEARING; ESTABLISHING A PUBLIC DRINKING WATER SPECIAL REVENUE FUND TO RECEIVE REVENUES FROM

FEES, ADMINISTRATIVE PENALTIES, AND CIVIL PENALTIES RECEIVED PURSUANT TO THIS ACT; ESTABLISHING---A---SANITATION---IN SUBDIVISIONS---SPECIAL---REVENUE---ACCOUNT---TO---RECEIVE---REVENUES FROM---FEES---RECEIVED---PURSUANT---TO---THIS---ACT; AND AMENDING SECTIONS 69-7-111, 75-6-102, 75-6-103, 75-6-104, 75-6-111, AND 76-4-105, MCA, AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is provided for this bill because rulemaking authority is delegated to the board of health and environmental sciences to prescribe procedures for administrative enforcement actions undertaken by the department of health and environmental sciences in administering the public water supply laws, as provided in Title 75, chapter 6, and to develop a fee schedule to enable the department to recover costs in administering these laws. Rulemaking authority is also delegated to the department to develop fees to pay for costs of reviewing plats and subdivisions under the laws related to sanitation in subdivisions, as provided in Title 76, chapter 4. IT IS THE INTENT OF THE LEGISLATURE THAT THE RULES ESTABLISH A REASONABLE FEE SCHEDULE THAT APPROXIMATES THE DEPARTMENT'S ACTUAL AND NECESSARY COSTS.

The legislature anticipates that the department will expand its enforcement activity in order to address ongoing



1 and increasing health problems with public water supply  
 2 systems and public sewage systems in Montana. In undertaking  
 3 this effort, the legislature expects that the department  
 4 will have the option to pursue administrative enforcement as  
 5 a means of expediting and encouraging compliance with Title  
 6 75, chapter 6. Nonetheless, it is the department's duty to  
 7 clearly inform each violator of:

8 (1) the nature of the action taken against it;

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25 state waters which exceeds that permitted by Montana water

1 quality standards, including but not limited to standards  
2 relating to change in temperature, taste, color, turbidity,  
3 or odor or the discharge or introduction of any liquid,  
4 gaseous, solid, radioactive, or other substance into any  
5 state water which will or is likely to create a nuisance or  
6 render the waters harmful, detrimental, or injurious to  
7 public health, recreation, safety, welfare, livestock, wild  
8 animals, birds, fish, or other wildlife. A discharge which  
9 is authorized under the pollution discharge permit rules of  
10 the board is not pollution under this chapter.

11 (10) "Public sewage system" means a system of  
12 collection, transportation, treatment, or disposal of sewage  
13 that is designed to serve or serves 10 or more families or  
14 25 or more persons daily for a period of at least 60 days  
15 out of the calendar year.

16 (11) "Public water supply system" means a system for the  
17 provision of water for human consumption from any community  
18 well, water hauler for cisterns, water bottling plant, water  
19 dispenser, or other water supply that is designed to serve  
20 or serves 10 or more families or 25 or more persons daily or  
21 has at least 10 service connections at least 60 days out of  
22 the calendar year.

23 (12) "Safe Drinking Water Act" means 42 U.S.C. 300f and  
24 regulations at Title 40, CFR, Parts 141 and 142.

25 (13) "Sewage" means water-carried waste products from

1 residences, public buildings, institutions, or other  
2 buildings, including discharge from human beings, together  
3 with ground water infiltration and surface water present.

4 (14) "State waters" means any body of water, irrigation  
5 system, or drainage system, either surface or underground."

6 **Section 2.** Section 75-6-103, MCA, is amended to read:

7 **\*75-6-103. Duties of the board.** (1) The board has  
8 general supervision over all state waters which are directly  
9 or indirectly being used by a person for a public water  
10 supply system or domestic purposes or as a source of ice.

11 (2) The board shall adopt rules and standards  
12 concerning:

13 (a) maximum contaminant levels for waters that are or  
14 will be used for a public water supply system;

15 (b) fees, as described in [section 4], for services  
16 rendered by the department ~~in-conducting-inspections~~;

17 (c) monitoring, recordkeeping, and reporting by persons  
18 who own or operate a public water supply system;

19 (d) requiring public notice to all users of a public  
20 water supply system when a person has been granted a  
21 variance or exemption or is in violation of this part or a  
22 rule or order issued pursuant to this part;

23 (e) the issuance of licenses by the department to  
24 laboratories that conduct analysis of public water supply  
25 systems;

1 (f) the siting, construction, operation, and  
2 modification of a public water supply system or public  
3 sewage system;

4 (g) the review of financial viability of a proposed  
5 public water supply system or public sewage system, as  
6 necessary to ensure the capability of the system to meet the  
7 requirements of this part;

8 ~~(g)(h)~~ the collection and analysis of samples of water  
9 used for drinking or domestic purposes;

10 ~~(h)(i)~~ the issuance of variances and exemptions as  
11 authorized by the federal Safe Drinking Water Act and this  
12 part; and

13 (j) administrative enforcement procedures and  
14 administrative penalties authorized under this part; and

15 ~~(i)(k)~~ any other requirement necessary for the  
16 protection of public health as described in this part.

17 (3) The board may issue orders necessary to fully  
18 implement the provisions of this part."

19 **Section 3.** Section 75-6-104, MCA, is amended to read:

20 **\*75-6-104. Duties of department.** The department shall:

21 (1) upon its own initiative or complaint to the  
22 department, to the mayor or health officer of a  
23 municipality, or to the managing board or officer of a  
24 public institution, make an investigation of alleged  
25 pollution of a water supply system and, if required,

1 prohibit the continuance of the pollution by ordering  
 2 removal of the cause of pollution;

3 (2) have waters examined to determine their quality and  
 4 the possibility that they may endanger public health;

5 (3) consult and advise authorities of cities and towns  
 6 and persons having or about to construct systems for water  
 7 supply, drainage, wastewater, and sewage as to the most  
 8 appropriate source of water supply and the best method of  
 9 assuring its quality;

10 (4) advise persons as to the best method of treating  
 11 and disposing of their drainage, sewage, or wastewater with  
 12 reference to the existing and future needs of other persons  
 13 and to prevent pollution;

14 (5) consult with persons engaged in or intending to  
 15 engage in manufacturing or other business whose drainage or  
 16 sewage may tend to pollute waters as to the best method of  
 17 preventing pollution;

18 (6) collect fees, as described in [section 4], for  
 19 services rendered---in---analyzing--water--and--conducting  
 20 inspections-to-cover-costs-of-the-service and deposit the  
 21 fees collected in the state public drinking water special  
 22 revenue fund for--use--by--the--department established in  
 23 [section 8];

24 (7) establish and maintain experiment stations and  
 25 conduct experiments to study the best methods of treating

1 water, drainage, wastewater, sewage, and industrial waste to  
 2 prevent pollution, including investigation of methods used  
 3 in other states;

4 (8) enter on premises at reasonable times to determine  
 5 sources of pollution or danger to water supply systems and  
 6 whether rules and standards of the board are being obeyed;

7 (9) enforce and administer the provisions of this part;

8 (10) establish a plan for the provision of safe drinking  
 9 water under emergency circumstances;

10 (11) maintain an inventory of public water supply  
 11 systems and establish a program for conducting sanitary  
 12 surveys; and

13 (12) enter into agreements with local boards of health  
 14 wherever appropriate for the performance of surveys and  
 15 inspections under the provisions of this part."

16 NEW SECTION. Section 4. Board to prescribe fees --  
 17 OPPORTUNITY FOR APPEAL. (1) The board shall by rule  
 18 prescribe fees to be assessed annually by the department on  
 19 owners of public water supply systems to recover department  
 20 costs in providing services under this part. The annual fee  
 21 for a public water supply system ~~must be based on the number~~  
 22 ~~of connections~~ IS NO MORE THAN \$2 FOR EACH SERVICE  
 23 CONNECTION to the public water supply system, although the  
 24 minimum fee for any system is \$100.

25 (2) PUBLIC OR--PRIVATE WATER SUPPLY SYSTEMS IN A

1 MUNICIPALITY MAY RAISE THE RATES TO RECOVER COSTS ASSOCIATED  
2 WITH THE FEES PRESCRIBED IN THIS SECTION WITHOUT THE PUBLIC  
3 HEARING REQUIRED IN 69-7-111.

4 ~~†2†~~(3) The board shall by rule prescribe fees to be  
5 assessed by the department on persons who submit plans and  
6 specifications for construction, alteration, or extension of  
7 a public water supply system or public sewage system. The  
8 fees must be commensurate with the cost to the department of  
9 reviewing the plans and specifications.

10 ~~†3†~~(4) Fees collected pursuant to this section must be  
11 deposited in the public drinking water special revenue fund  
12 established in [section 8].

13 (5) (A) THE DEPARTMENT SHALL NOTIFY THE OWNER OF A  
14 PUBLIC WATER SUPPLY SYSTEM IN WRITING OF THE AMOUNT OF THE  
15 FEE TO BE ASSESSED AND THE BASIS FOR THE ASSESSMENT. THE  
16 OWNER MAY APPEAL THE FEE ASSESSMENT IN WRITING TO THE BOARD  
17 WITHIN 20 DAYS AFTER RECEIPT OF THE WRITTEN NOTICE.

18 (B) AN APPEAL MUST BE BASED ON THE ALLEGATION THAT THE  
19 FEE IS ERRONEOUS OR EXCESSIVE. AN APPEAL MAY NOT BE BASED  
20 ONLY ON THE FEE SCHEDULE ADOPTED BY THE BOARD.

21 (C) IF ANY PART OF THE FEE ASSESSMENT IS NOT APPEALED,  
22 IT MUST BE PAID TO THE DEPARTMENT UPON RECEIPT OF THE NOTICE  
23 PROVIDED FOR IN SUBSECTION (5)(A).

24 **Section 5.** Section 75-6-111, MCA, is amended to read:  
25 "75-6-111. Appeal from rule or standard -- injunction

1 to require compliance. (1) A person aggrieved by a rule,  
2 standard, or order adopted or issued pursuant to this part  
3 may appeal to the district court, except as otherwise  
4 provided in [section 6]. While the appeal is pending, the  
5 rule, standard, or order is in force.

6 (2) The department may seek an injunction from the  
7 appropriate district court to require compliance with this  
8 part or a rule or order issued as authorized by this part.  
9 The court may award the department costs and expenses  
10 incurred in investigating and abating the violation. The  
11 department may also initiate an action to collect a criminal  
12 penalty as provided in 75-6-113 or a civil penalty as  
13 provided in [section 7]."

14 NEW SECTION. Section 6. Administrative enforcement.

15 (1) If the department believes that a violation of this  
16 part, a rule adopted under this part, or a condition of  
17 approval issued under this part has occurred, it may serve  
18 written notice of the violation, by certified mail, on the  
19 alleged violator or his agent. The notice must specify the  
20 provision of this part, the rule, or the condition of  
21 approval alleged to have been violated and the facts alleged  
22 to constitute a violation. The notice must include an order  
23 to take necessary corrective action within a reasonable  
24 period of time, which must be stated in the order. Service  
25 by mail is complete on the date of filing.

1 (2) If the alleged violator does not request a hearing  
2 before the board within 30 days of the date of service, the  
3 order becomes final. Failure to comply with a final order  
4 may subject the violator to an action commenced pursuant to  
5 75-6-104, 75-6-113, or [section 7].

6 (3) If the alleged violator requests a hearing before  
7 the board within 30 days of the date of service, the board  
8 shall schedule a hearing. After the hearing is held, the  
9 board may:

10 (a) affirm or modify the department's order issued  
11 under subsection (1) if the board finds that a violation has  
12 occurred; or

13 (b) rescind the department's order if the board finds  
14 that a violation has not occurred.

15 (4) An order issued by the department or the board may  
16 set a date by which the violation must cease and set a time  
17 limit for action to correct a violation.

18 (5) As an alternative to issuing an order pursuant to  
19 subsection (1), the department may:

20 (a) require the alleged violator to appear before the  
21 board for a hearing, at a time and place specified in the  
22 notice, to answer the charges complained of; or

23 (b) initiate an action under 75-6-111(2), 75-6-113, or  
24 [section 7].

25 (6) An action initiated under this part may include an

1 administrative penalty not to exceed ~~\$17,000~~ \$500 for each  
2 day of violation. Administrative penalties collected under  
3 this section must be deposited in the public drinking water  
4 special revenue fund established in [section 8].

5 (7) THE CONTESTED CASE PROVISIONS OF THE MONTANA  
6 ADMINISTRATIVE PROCEDURE ACT, PROVIDED FOR IN TITLE 2,  
7 CHAPTER 4, PART 6, APPLY TO A HEARING UNDER [SECTION 4] OR  
8 THIS SECTION.

9 NEW SECTION. Section 7. Civil penalty. (1) A person  
10 who violates this part or a rule, order, or condition of  
11 approval issued under this part is subject to a civil  
12 penalty not to exceed \$10,000.

13 (2) Each day of violation constitutes a separate  
14 violation.

15 (3) Action under this section does not bar enforcement  
16 of this part or a rule, order, or condition of approval  
17 issued under this part by injunction or other appropriate  
18 remedy.

19 (4) Civil penalties collected pursuant to this section  
20 must be deposited in the public drinking water special  
21 revenue fund established in [section 8].

22 NEW SECTION. Section 8. Public drinking water special  
23 revenue fund. (1) There is a public drinking water special  
24 revenue fund within the state special revenue fund  
25 established in 17-2-102. There are established in the public

1 drinking water special revenue fund an operator training  
2 account and a public drinking water program account.

- 3 (2) There must be credited to:
- 4 (a) the operator training account all administrative  
5 and civil penalties collected under [sections 6 and 7]; and
- 6 (b) the public drinking water program account, all  
7 revenues from fees assessed and collected pursuant to  
8 [section 4].

9 (3) Funds from the operator training account may be  
10 used only to finance public water supply system and public  
11 sewage system operator training programs.

12 (4) Funds from the public drinking water program  
13 account may be used only to pay department costs in  
14 implementing the public drinking water supply program, as  
15 described in this part.

16 **Section 9.** Section 76-4-105, MCA, is amended to read:

17 "76-4-105. Lot fees -- general fund support. (1) The  
18 department shall adopt rules setting forth fees, that do not  
19 to exceed \$48--per--parcel,--for--services-rendered-in-the  
20 review-of actual costs to the department in reviewing plats  
21 and subdivisions. The rules shall provide for a schedule of  
22 fees to be paid by the applicant for plat or subdivision  
23 review to the department for deposit in the state-general-  
24 fund sanitation--in--subdivisions--special--revenue--account  
25 established--in--{section--10} STATE GENERAL FUND or, if

1 applicable, to another reviewing authority for deposit in  
2 the general fund of the reviewing authority's jurisdiction.  
3 The fees shall be used for review of plats and subdivisions  
4 based on the complexity of the subdivision, including but  
5 not limited to:

- 6 (a) number of lots in the subdivision;
- 7 (b) the type of water system to serve the development;
- 8 (c) the type of sewage disposal to serve the  
9 development; and
- 10 (d) the degree of environmental research necessary to  
11 supplement the review procedure.

12 (2) The department shall adopt rules to determine the  
13 distribution of fees between the local governing body and  
14 the state-general-fund sanitation--in--subdivisions--special  
15 revenue--account--established--in--{section--10} STATE GENERAL  
16 FUND, as provided in 76-4-128. When a subdivision is  
17 reviewed under the provisions of 76-4-124, the local  
18 governing body shall, within 20 days after receiving  
19 preliminary plat approval under the Montana Subdivision and  
20 Platting Act, distribute the lot fees according to the fee  
21 schedule adopted under this section.

22 (3) When a local department or board of health conducts  
23 a review under the provisions of 76-4-104, it shall submit  
24 to the department, along with its approval statement, a fee  
25 of \$5 per reviewed lot, for purposes of offsetting costs

1 incurred in providing certification to a local reviewing  
2 authority and other administrative costs.

3 (4) A fee as described in this section is not required  
4 for the review of subdivisions in which divisions are made  
5 for the purpose of relocating common boundary lines unless  
6 the division will result in the installation of additional  
7 water supply or sewage disposal facilities.

8 (5) Costs of implementing this part must be paid from  
9 the state general fund as provided by legislative  
10 appropriation ~~and--from--the--sanitation--in--subdivisions~~  
11 ~~special-revenue-account-established-in-[section-10]."~~

12 ~~NEW-SECTION--Section-10--Sanitation--in--subdivisions~~  
13 ~~special-revenue--account--(1)--There--is--a--sanitation--in~~  
14 ~~subdivisions--special--revenue--account--within--the--state~~  
15 ~~special-revenue-fund-established-in-17-2-102-~~

16 ~~(2)--There--must--be--credited--to--the--sanitation--in~~  
17 ~~subdivision-special-revenue-account-all-fees-collected-under~~  
18 ~~76-4-105-and-all-penalties-collected-under-76-4-109-~~

19 ~~(3)--Funds--from--the--sanitation-in-subdivisions-special~~  
20 ~~revenue-account-may-be-used-only-to-pay-department-costs--in~~  
21 ~~reviewing-plats-and-subdivisions-~~

22 **SECTION 10. SECTION 69-7-111, MCA, IS AMENDED TO READ:**

23 "69-7-111. Municipal rate hearing required -- notice.

24 (1) ~~if~~ Except as provided in [section 4], if the governing  
25 body of a municipality considers it advisable to regulate,

1 establish, or change rates, charges, or classifications  
2 imposed on its customers, it shall order a hearing to be  
3 held before it at a time and place specified.

4 (2) Notice of the hearing shall be published in a  
5 newspaper as provided in 7-1-4127.

6 (3) (a) The notice shall be published three times with  
7 at least 6 days separating each publication. The first  
8 publication may be no more than 28 days prior to the  
9 hearing, and the last publication may be no less than 3 days  
10 prior to the hearing.

11 (b) The notice must also be mailed at least 7 days and  
12 not more than 30 days prior to the hearing to persons served  
13 by the utility. The notice must be mailed within the  
14 prescribed time period. This notice must contain an estimate  
15 of the amount the customer's average bill will increase.

16 (4) The published notice must contain:

17 (a) the date, time, and place of the hearing;

18 (b) a brief statement of the proposed action; and

19 (c) the address and telephone number of a person who  
20 may be contacted for further information regarding the  
21 hearing.

22 (5) Notice of all hearings shall be mailed first class,  
23 postage prepaid, to the Montana consumer counsel."

24 **NEW SECTION. Section 11. Codification instruction.** 771  
25 [Sections 4, 6, 7, and 8] are intended to be codified as an

1 integral part of Title 75, chapter 6, part 1, and the  
2 provisions of Title 75, chapter 6, part 1, apply to  
3 [sections 4, 6, 7, and 8].

4 ~~{2}--{Section-10}-is--intended--to--be--codified--as--an~~  
5 ~~integral--part--of--Title-767--chapter-47--and--the--provisions--of~~  
6 ~~Title-767--chapter-47--apply--to--{section-10}.~~

7 NEW-SECTION.--Section-12.--Effective-date.--{This-act}-is  
8 effective-July-17-1991.

-End-



HOUSE STANDING COMMITTEE REPORT

April 11, 1991  
Page 2 of 3

April 11, 1991  
Page 1 of 3

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 407 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Raney  
Bob Raney, Chairman  
Carried by: Rep. O'Keefe

And, that such amendments read:

1. Title, line 24.  
Following: "HEARING;"  
Insert: "PROVIDING THAT LOCAL SEWER DISTRICTS MAY SELL SEWER SERVICE TO MUNICIPALITIES OR TOWNS OR CONSUMERS LOCATED WITHIN OR OUTSIDE THE DISTRICT;"
2. Title, page 2, line 4.  
Following: "~~ACT,~~"  
Strike: "AND"  
Insert: "ALLOCATING A PORTION OF THE REVENUES TO THE GROUND WATER ASSESSMENT ACCOUNT;"
3. Title, page 2, line 5.  
Following: "SECTIONS"  
Insert: "7-13-2218,"
4. Title, page 2, line 6.  
Following: "~~DATE~~"  
Insert: "; AND PROVIDING A TERMINATION DATE"
5. Page 4, line 24.  
Following: line 23  
Insert: "(2) 'Community water system' means any public water supply system that serves at least 10 service connections used by year-round residents or regularly serves at least 25 year-round residents."  
Renumber: subsequent subsections
6. Page 7, line 6.  
Following: line 5  
Insert: "(16) 'Transient noncommunity water system' means any public water supply system that is not a community water system and that serves persons on a transient basis."

7. Page 10, line 22.  
Following: "THAN"  
Insert: "\$2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than"
8. Page 10, line 24.  
Following: "100"  
Insert: ", except that the fee for a transient noncommunity water system is \$50"
9. Page 11, line 12.  
Following: "[section 8]"  
Insert: "[, except that \$45,000 must be deposited each fiscal year in the ground water assessment account, established by [section 4 of Senate Bill No. 94], within the state special revenue fund]"
10. Page 15, line 6.  
Following: "account"  
Strike: ", all"
11. Page 15, line 7.  
Following: "assessed"  
Strike: "and"  
Insert: ", "  
Following: "collected"  
Insert: ", and allocated"
12. Page 18, line 24.  
Following: line 23  
Insert: "Section 11. Section 7-13-2218, MCA, is amended to read:  
"7-13-2218. District powers related to water and sewer projects. Any district incorporated as provided in this part may:  
(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.  
(2) if the incorporators of the district are members of a private, nonprofit water association that was formed under the laws of this state, acquire by eminent domain from that water association any type of property referred to in this section;

April 11, 1991  
Page 3 of 3

(3) store water for the benefit of the district; conserve water for future use; appropriate, acquire, and conserve water and water rights for the purposes of the district; commence, maintain, intervene in, and compromise, in the name of the district, and assume the costs of any action or proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or a benefit to any land situated in the district;

(4) commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants;

(5) commence, maintain, and defend actions and proceedings to prevent any interference with the waters or rights referred to in this section as may endanger the inhabitants or lands of the district;

(6) lease from any person, firm, or public or private corporation, with the privilege of purchase or otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and maintain them;

(7) sell water or the use of water for household or domestic or other similar purposes or sell sewer service and, whenever there is a surplus of water or sewerworks capacity, sell or otherwise dispose of the water or sewerworks capacity to municipalities or towns or to consumers located within or outside the boundaries of the district."  
Renumber: subsequent section

13. Page 19, line 9.

Following: line 8

Insert: "NEW SECTION. Section 13. Termination. The bracketed portion of [section 4(4)] terminates October 1, 1993."

1 SENATE BILL NO. 407  
 2 INTRODUCED BY WATERMAN, O'KEEFE, J. RICE, HARPER,  
 3 GERVAIS, MAZUREK  
 4 BY REQUEST OF THE DEPARTMENT OF HEALTH AND  
 5 ENVIRONMENTAL SCIENCES  
 6  
 7 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE  
 8 DEFINITION OF "PUBLIC WATER SUPPLY SYSTEM"; ENABLING THE  
 9 BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO REVIEW A  
 10 PUBLIC WATER SUPPLY SYSTEM OR PUBLIC SEWAGE SYSTEM TO  
 11 DETERMINE IF THAT SYSTEM HAS THE FINANCIAL CAPABILITY TO  
 12 COMPLY WITH THE PUBLIC WATER SUPPLY LAWS; DESCRIBING A  
 13 PROCESS TO BE USED BY THE DEPARTMENT OF HEALTH AND  
 14 ENVIRONMENTAL SCIENCES TO ADMINISTRATIVELY ENFORCE THE LAWS  
 15 PROTECTING PUBLIC WATER SUPPLIES; PROVIDING AN  
 16 ADMINISTRATIVE PENALTY AND CIVIL PENALTY FOR VIOLATION OF  
 17 PUBLIC WATER SUPPLY LAWS OR OF A RULE, ORDER, OR CONDITION  
 18 OF APPROVAL ISSUED UNDER THOSE LAWS; PROVIDING FOR  
 19 ASSESSMENT OF FEES ESTABLISHED THROUGH RULEMAKING TO RECOVER  
 20 COSTS OF DEPARTMENT SERVICES UNDER THE LAWS RELATING TO  
 21 PUBLIC WATER SUPPLIES AND TO SANITATION IN SUBDIVISIONS;  
 22 PROVIDING FOR APPEAL OF THE FEE ASSESSMENT; ALLOWING A  
 23 MUNICIPALITY TO RAISE WATER RATES TO COVER COSTS ASSOCIATED  
 24 WITH FEES WITHOUT A PUBLIC HEARING; PROVIDING THAT LOCAL  
 25 SEWER DISTRICTS MAY SELL SEWER SERVICE TO MUNICIPALITIES OR

1 TOWNS OR CONSUMERS LOCATED WITHIN OR OUTSIDE THE DISTRICT;  
 2 ESTABLISHING A PUBLIC DRINKING WATER SPECIAL REVENUE FUND TO  
 3 RECEIVE REVENUES FROM FEES, ADMINISTRATIVE PENALTIES, AND  
 4 CIVIL PENALTIES RECEIVED PURSUANT TO THIS ACT; ESTABLISHING  
 5 A--SANITATION--IN--SUBDIVISIONS--SPECIAL--REVENUE--ACCOUNT--TO  
 6 RECEIVE--REVENUES--FROM--FEES--RECEIVED--PURSUANT--TO--THIS--ACT;  
 7 ALLOCATING A PORTION OF THE REVENUES TO THE GROUND WATER  
 8 ASSESSMENT ACCOUNT; AND AMENDING SECTIONS 7-13-2218,  
 9 69-7-111, 75-6-102, 75-6-103, 75-6-104, 75-6-111, AND  
 10 76-4-105, MCA;--AND--PROVIDING--AN--EFFECTIVE--DATE; AND  
 11 PROVIDING A TERMINATION DATE."  
 12

STATEMENT OF INTENT

13  
 14 A statement of intent is provided for this bill because  
 15 rulemaking authority is delegated to the board of health and  
 16 environmental sciences to prescribe procedures for  
 17 administrative enforcement actions undertaken by the  
 18 department of health and environmental sciences in  
 19 administering the public water supply laws, as provided in  
 20 Title 75, chapter 6, and to develop a fee schedule to enable  
 21 the department to recover costs in administering these laws.  
 22 Rulemaking authority is also delegated to the department to  
 23 develop fees to pay for costs of reviewing plats and  
 24 subdivisions under the laws related to sanitation in  
 25 subdivisions, as provided in Title 76, chapter 4. IT IS THE



1 INTENT OF THE LEGISLATURE THAT THE RULES ESTABLISH A  
 2 REASONABLE FEE SCHEDULE THAT APPROXIMATES THE DEPARTMENT'S  
 3 ACTUAL AND NECESSARY COSTS.

4 The legislature anticipates that the department will  
 5 expand its enforcement activity in order to address ongoing  
 6 and increasing health problems with public water supply  
 7 systems and public sewage systems in Montana. In undertaking  
 8 this effort, the legislature expects that the department  
 9 will have the option to pursue administrative enforcement as  
 10 a means of expediting and encouraging compliance with Title  
 11 75, chapter 6. Nonetheless, it is the department's duty to  
 12 clearly inform each violator of:

- 13 (1) the nature of the action taken against it;  
 14 (2) what the department requires to resolve the matter;  
 15 and  
 16 (3) what legal avenues are available to the violator if  
 17 he desires to contest the matter.

18 THE LEGISLATURE RECOGNIZES THAT AN ECONOMIC HARDSHIP MAY  
 19 BE IMPOSED ON A PUBLIC WATER SUPPLY SYSTEM IN ORDER FOR THAT  
 20 SYSTEM TO BE BROUGHT INTO COMPLIANCE WITH STATE AND FEDERAL  
 21 PUBLIC WATER SUPPLY LAWS AND THAT THIS HARDSHIP MAY BE  
 22 FURTHER INCREASED BY THE LEVYING OF ADMINISTRATIVE AND CIVIL  
 23 PENALTIES FOR NONCOMPLIANCE. IT IS THE INTENTION OF THE  
 24 LEGISLATURE THAT THE DEPARTMENT ADOPT RULES THAT ESTABLISH A  
 25 PROCEDURE FOR THE PROGRESSIVE ENFORCEMENT OF THIS ACT IN

1 WHICH THE LEVYING OF ADMINISTRATIVE AND CIVIL PENALTIES IS A  
 2 FINAL ACTION. THE DEPARTMENT MAY ADOPT RULES THAT ALLOW FOR  
 3 THE BYPASS OF THE ENFORCEMENT PROCEDURES AND THE IMMEDIATE  
 4 ASSESSMENT OF PENALTIES IF SPECIFIC CIRCUMSTANCES WARRANT  
 5 THIS ACTION.

6 The rules also require the board of health and  
 7 environmental sciences to develop fees for recovery of costs  
 8 incurred by the department in delivering services to persons  
 9 who own or operate or intend to own or operate a public  
 10 water supply system or public sewage system. These costs  
 11 include costs associated with review of engineering plans  
 12 and specifications, inspections, and general assistance. To  
 13 assist the board in developing these rules, the department  
 14 shall prepare and submit to the board a detailed estimate of  
 15 projected costs associated with these services for fiscal  
 16 years 1992 and 1993. The board shall develop a fee schedule  
 17 that will provide revenues that are commensurate with the  
 18 projected costs. A similar approach should be used by the  
 19 department in developing rules setting new fees for review  
 20 of plats and subdivisions under 76-4-105.

21  
 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 **Section 1.** Section 75-6-102, MCA, is amended to read:

24 "75-6-102. Definitions. As used in this part, unless  
 25 the context clearly indicates otherwise, the following

1 definitions apply:

2 (1) "Board" means the board of health and environmental  
3 sciences provided for in 2-15-2104.

4 (2) "COMMUNITY WATER SYSTEM" MEANS ANY PUBLIC WATER  
5 SUPPLY SYSTEM THAT SERVES AT LEAST 10 SERVICE CONNECTIONS  
6 USED BY YEAR-ROUND RESIDENTS OR REGULARLY SERVES AT LEAST 25  
7 YEAR-ROUND RESIDENTS.

8 ~~(2)~~(3) "Contamination" means impairment of the quality  
9 of state waters by sewage, industrial wastes, or other  
10 wastes creating a hazard to human health.

11 ~~(3)~~(4) "Department" means the department of health and  
12 environmental sciences provided for in Title 2, chapter 15,  
13 part 21.

14 ~~(4)~~(5) "Drainage" means rainfall, surface, and subsoil  
15 water.

16 ~~(5)~~(6) "Industrial waste" means any waste substance  
17 from the processes of business or industry or from the  
18 development of any natural resource, together with any  
19 sewage that may be present.

20 ~~(6)~~(7) "Maximum contaminant level" means the maximum  
21 permissible level of a contaminant in water which is  
22 delivered to any user of a public water supply system.

23 ~~(7)~~(8) "Other waste" means garbage, municipal refuse,  
24 decayed wood, sawdust, shavings, bark, lime, sand, ashes,  
25 offal, night soil, oil, grease, tar, heat, chemicals, dead

1 animals, sediment, wrecked or discarded equipment,  
2 radioactive materials, solid waste, and all other substances  
3 that may pollute state waters.

4 ~~(8)~~(9) "Person" means any individual, corporation,  
5 association, partnership, municipality, other political  
6 subdivision of the state, or federal agency.

7 ~~(9)~~(10) "Pollution" means contamination or other  
8 alteration of the physical, chemical, or biological  
9 properties of any state waters which exceeds that permitted  
10 by Montana water quality standards, including but not  
11 limited to standards relating to change in temperature,  
12 taste, color, turbidity, or odor or the discharge or  
13 introduction of any liquid, gaseous, solid, radioactive, or  
14 other substance into any state water which will or is likely  
15 to create a nuisance or render the waters harmful,  
16 detrimental, or injurious to public health, recreation,  
17 safety, welfare, livestock, wild animals, birds, fish, or  
18 other wildlife. A discharge which is authorized under the  
19 pollution discharge permit rules of the board is not  
20 pollution under this chapter.

21 ~~(10)~~(11) "Public sewage system" means a system of  
22 collection, transportation, treatment, or disposal of sewage  
23 that is designed to serve or serves 10 or more families or  
24 25 or more persons daily for a period of at least 60 days  
25 out of the calendar year.

1       ~~(11)~~(12) "Public water supply system" means a system for  
2 the provision of water for human consumption from any  
3 community well, water hauler for cisterns, water bottling  
4 plant, water dispenser, or other water supply that is  
5 designed to serve or serves 10 or more families or 25 or  
6 more persons daily or has at least 10 service connections at  
7 least 60 days out of the calendar year.

8       ~~(12)~~(13) "Safe Drinking Water Act" means 42 U.S.C. 300f  
9 and regulations at Title 40, CFR, Parts 141 and 142.

10       ~~(13)~~(14) "Sewage" means water-carried waste products  
11 from residences, public buildings, institutions, or other  
12 buildings, including discharge from human beings, together  
13 with ground water infiltration and surface water present.

14       ~~(14)~~(15) "State waters" means any body of water,  
15 irrigation system, or drainage system, either surface or  
16 underground.

17       (16) "TRANSIENT NONCOMMUNITY WATER SYSTEM" MEANS ANY  
18 PUBLIC WATER SUPPLY SYSTEM THAT IS NOT A COMMUNITY WATER  
19 SYSTEM AND THAT SERVES PERSONS ON A TRANSIENT BASIS."

20       **Section 2.** Section 75-6-103, MCA, is amended to read:

21       "75-6-103. Duties of the board. (1) The board has  
22 general supervision over all state waters which are directly  
23 or indirectly being used by a person for a public water  
24 supply system or domestic purposes or as a source of ice.

25       (2) The board shall adopt rules and standards

1 concerning:

2       (a) maximum contaminant levels for waters that are or  
3 will be used for a public water supply system;

4       (b) fees, as described in [section 4], for services  
5 rendered by the department ~~in-conducting-inspections;~~

6       (c) monitoring, recordkeeping, and reporting by persons  
7 who own or operate a public water supply system;

8       (d) requiring public notice to all users of a public  
9 water supply system when a person has been granted a  
10 variance or exemption or is in violation of this part or a  
11 rule or order issued pursuant to this part;

12       (e) the issuance of licenses by the department to  
13 laboratories that conduct analysis of public water supply  
14 systems;

15       (f) the siting, construction, operation, and  
16 modification of a public water supply system or public  
17 sewage system;

18       (g) the review of financial viability of a proposed  
19 public water supply system or public sewage system, as  
20 necessary to ensure the capability of the system to meet the  
21 requirements of this part;

22       ~~(g)~~(h) the collection and analysis of samples of water  
23 used for drinking or domestic purposes;

24       ~~(h)~~(i) the issuance of variances and exemptions as  
25 authorized by the federal Safe Drinking Water Act and this

1 part; and

2 (j) administrative enforcement procedures and  
3 administrative penalties authorized under this part; and

4 ~~(i)~~(k) any other requirement necessary for the  
5 protection of public health as described in this part.

6 (3) The board may issue orders necessary to fully  
7 implement the provisions of this part."

8 **Section 3.** Section 75-6-104, MCA, is amended to read:

9 "75-6-104. Duties of department. The department shall:

10 (1) upon its own initiative or complaint to the  
11 department, to the mayor or health officer of a  
12 municipality, or to the managing board or officer of a  
13 public institution, make an investigation of alleged  
14 pollution of a water supply system and, if required,  
15 prohibit the continuance of the pollution by ordering  
16 removal of the cause of pollution;

17 (2) have waters examined to determine their quality and  
18 the possibility that they may endanger public health;

19 (3) consult and advise authorities of cities and towns  
20 and persons having or about to construct systems for water  
21 supply, drainage, wastewater, and sewage as to the most  
22 appropriate source of water supply and the best method of  
23 assuring its quality;

24 (4) advise persons as to the best method of treating  
25 and disposing of their drainage, sewage, or wastewater with

1 reference to the existing and future needs of other persons  
2 and to prevent pollution;

3 (5) consult with persons engaged in or intending to  
4 engage in manufacturing or other business whose drainage or  
5 sewage may tend to pollute waters as to the best method of  
6 preventing pollution;

7 (6) collect fees, as described in [section 4], for  
8 services rendered---in---analyzing---water---and---conducting  
9 inspections-to-cover-costs-of-the-service and deposit the  
10 fees collected in the state public drinking water special  
11 revenue fund ~~for--use--by--the--department~~ established in  
12 [section 8];

13 (7) establish and maintain experiment stations and  
14 conduct experiments to study the best methods of treating  
15 water, drainage, wastewater, sewage, and industrial waste to  
16 prevent pollution, including investigation of methods used  
17 in other states;

18 (8) enter on premises at reasonable times to determine  
19 sources of pollution or danger to water supply systems and  
20 whether rules and standards of the board are being obeyed;

21 (9) enforce and administer the provisions of this part;

22 (10) establish a plan for the provision of safe drinking  
23 water under emergency circumstances;

24 (11) maintain an inventory of public water supply  
25 systems and establish a program for conducting sanitary

1 surveys; and

2 (12) enter into agreements with local boards of health  
3 wherever appropriate for the performance of surveys and  
4 inspections under the provisions of this part."

5 NEW SECTION. Section 4. Board to prescribe fees --  
6 OPPORTUNITY FOR APPEAL. (1) The board shall by rule  
7 prescribe fees to be assessed annually by the department on  
8 owners of public water supply systems to recover department  
9 costs in providing services under this part. The annual fee  
10 for a public water supply system ~~must be based on the number~~  
11 of connections is no more than \$2.25 for each service  
12 connection to the public water supply system for the  
13 biennium beginning July 1, 1991, and ending June 30, 1993,  
14 and thereafter is no more than \$2 for each service  
15 connection to the public water supply system, although the  
16 minimum fee for any system is \$100, except that the fee for  
17 a transient noncommunity water system is \$50.

18 (2) Public or--private water supply systems in a  
19 municipality may raise the rates to recover costs associated  
20 with the fees prescribed in this section without the public  
21 hearing required in 69-7-111.

22 (2)(3) The board shall by rule prescribe fees to be  
23 assessed by the department on persons who submit plans and  
24 specifications for construction, alteration, or extension of  
25 a public water supply system or public sewage system. The

1 fees must be commensurate with the cost to the department of  
2 reviewing the plans and specifications.

3 (3)(4) Fees collected pursuant to this section must be  
4 deposited in the public drinking water special revenue fund  
5 established in [section 8][, EXCEPT THAT \$45,000 MUST BE  
6 DEPOSITED EACH FISCAL YEAR IN THE GROUND WATER ASSESSMENT  
7 ACCOUNT, ESTABLISHED BY [SECTION 4 OF SENATE BILL NO. 94],  
8 WITHIN THE STATE SPECIAL REVENUE FUND].

9 (5) (A) THE DEPARTMENT SHALL NOTIFY THE OWNER OF A  
10 PUBLIC WATER SUPPLY SYSTEM IN WRITING OF THE AMOUNT OF THE  
11 FEE TO BE ASSESSED AND THE BASIS FOR THE ASSESSMENT. THE  
12 OWNER MAY APPEAL THE FEE ASSESSMENT IN WRITING TO THE BOARD  
13 WITHIN 20 DAYS AFTER RECEIPT OF THE WRITTEN NOTICE.

14 (B) AN APPEAL MUST BE BASED ON THE ALLEGATION THAT THE  
15 FEE IS ERRONEOUS OR EXCESSIVE. AN APPEAL MAY NOT BE BASED  
16 ONLY ON THE FEE SCHEDULE ADOPTED BY THE BOARD.

17 (C) IF ANY PART OF THE FEE ASSESSMENT IS NOT APPEALED,  
18 IT MUST BE PAID TO THE DEPARTMENT UPON RECEIPT OF THE NOTICE  
19 PROVIDED FOR IN SUBSECTION (5)(A).

20 **Section 5.** Section 75-6-111, MCA, is amended to read:

21 "75-6-111. **Appeal from rule or standard -- injunction**  
22 **to require compliance.** (1) A person aggrieved by a rule,  
23 standard, or order adopted or issued pursuant to this part  
24 may appeal to the district court, except as otherwise  
25 provided in [section 6]. While the appeal is pending, the



1 rule, standard, or order is in force.

2 (2) The department may seek an injunction from the  
3 appropriate district court to require compliance with this  
4 part or a rule or order issued as authorized by this part.  
5 The court may award the department costs and expenses  
6 incurred in investigating and abating the violation. The  
7 department may also initiate an action to collect a criminal  
8 penalty as provided in 75-6-113 or a civil penalty as  
9 provided in [section 7]."

10 **NEW SECTION. Section 6. Administrative enforcement.**

11 (1) If the department believes that a violation of this  
12 part, a rule adopted under this part, or a condition of  
13 approval issued under this part has occurred, it may serve  
14 written notice of the violation, by certified mail, on the  
15 alleged violator or his agent. The notice must specify the  
16 provision of this part, the rule, or the condition of  
17 approval alleged to have been violated and the facts alleged  
18 to constitute a violation. The notice must include an order  
19 to take necessary corrective action within a reasonable  
20 period of time, which must be stated in the order. Service  
21 by mail is complete on the date of filing.

22 (2) If the alleged violator does not request a hearing  
23 before the board within 30 days of the date of service, the  
24 order becomes final. Failure to comply with a final order  
25 may subject the violator to an action commenced pursuant to

1 75-6-104, 75-6-113, or [section 7].

2 (3) If the alleged violator requests a hearing before  
3 the board within 30 days of the date of service, the board  
4 shall schedule a hearing. After the hearing is held, the  
5 board may:

6 (a) affirm or modify the department's order issued  
7 under subsection (1) if the board finds that a violation has  
8 occurred; or

9 (b) rescind the department's order if the board finds  
10 that a violation has not occurred.

11 (4) An order issued by the department or the board may  
12 set a date by which the violation must cease and set a time  
13 limit for action to correct a violation.

14 (5) As an alternative to issuing an order pursuant to  
15 subsection (1), the department may:

16 (a) require the alleged violator to appear before the  
17 board for a hearing, at a time and place specified in the  
18 notice, to answer the charges complained of; or

19 (b) initiate an action under 75-6-111(2), 75-6-113, or  
20 [section 7].

21 (6) An action initiated under this part may include an  
22 administrative penalty not to exceed ~~\$7,000~~ \$500 for each  
23 day of violation. Administrative penalties collected under  
24 this section must be deposited in the public drinking water  
25 special revenue fund established in [section 8].

1 (7) THE CONTESTED CASE PROVISIONS OF THE MONTANA  
 2 ADMINISTRATIVE PROCEDURE ACT, PROVIDED FOR IN TITLE 2,  
 3 CHAPTER 4, PART 6, APPLY TO A HEARING UNDER [SECTION 4] OR  
 4 THIS SECTION.

5 NEW SECTION. Section 7. Civil penalty. (1) A person  
 6 who violates this part or a rule, order, or condition of  
 7 approval issued under this part is subject to a civil  
 8 penalty not to exceed \$10,000.

9 (2) Each day of violation constitutes a separate  
 10 violation.

11 (3) Action under this section does not bar enforcement  
 12 of this part or a rule, order, or condition of approval  
 13 issued under this part by injunction or other appropriate  
 14 remedy.

15 (4) Civil penalties collected pursuant to this section  
 16 must be deposited in the public drinking water special  
 17 revenue fund established in [section 8].

18 NEW SECTION. Section 8. Public drinking water special  
 19 revenue fund. (1) There is a public drinking water special  
 20 revenue fund within the state special revenue fund  
 21 established in 17-2-102. There are established in the public  
 22 drinking water special revenue fund an operator training  
 23 account and a public drinking water program account.

24 (2) There must be credited to:

25 (a) the operator training account all administrative

1 and civil penalties collected under [sections 6 and 7]; and

2 (b) the public drinking water program account, ~~and~~  
 3 revenues from fees assessed ~~and,~~ collected, AND ALLOCATED  
 4 pursuant to [section 4].

5 (3) Funds from the operator training account may be  
 6 used only to finance public water supply system and public  
 7 sewage system operator training programs.

8 (4) Funds from the public drinking water program  
 9 account may be used only to pay department costs in  
 10 implementing the public drinking water supply program, as  
 11 described in this part.

12 **Section 9.** Section 76-4-105, MCA, is amended to read:

13 **\*76-4-105. Lot fees -- general fund support.** (1) The  
 14 department shall adopt rules setting forth fees, that do not  
 15 to exceed \$48-per--parcel,--for--services--rendered--in--the  
 16 review--of actual costs to the department in reviewing plats  
 17 and subdivisions. The rules shall provide for a schedule of  
 18 fees to be paid by the applicant for plat or subdivision  
 19 review to the department for deposit in the state--general  
 20 fund sanitation--in--subdivisions--special--revenue--account  
 21 established-in--{section--10} STATE GENERAL FUND or, if  
 22 applicable, to another reviewing authority for deposit in  
 23 the general fund of the reviewing authority's jurisdiction.  
 24 The fees shall be used for review of plats and subdivisions  
 25 based on the complexity of the subdivision, including but

1 not limited to:

- 2 (a) number of lots in the subdivision;
- 3 (b) the type of water system to serve the development;
- 4 (c) the type of sewage disposal to serve the
- 5 development; and
- 6 (d) the degree of environmental research necessary to
- 7 supplement the review procedure.

8 (2) The department shall adopt rules to determine the  
 9 distribution of fees between the local governing body and  
 10 the state--general--fund ~~sanitation-in-subdivisions-special~~  
 11 ~~revenue-account-established-in-{section-10}~~ STATE GENERAL  
 12 FUND, as provided in 76-4-128. When a subdivision is  
 13 reviewed under the provisions of 76-4-124, the local  
 14 governing body shall, within 20 days after receiving  
 15 preliminary plat approval under the Montana Subdivision and  
 16 Platting Act, distribute the lot fees according to the fee  
 17 schedule adopted under this section.

18 (3) When a local department or board of health conducts  
 19 a review under the provisions of 76-4-104, it shall submit  
 20 to the department, along with its approval statement, a fee  
 21 of \$5 per reviewed lot, for purposes of offsetting costs  
 22 incurred in providing certification to a local reviewing  
 23 authority and other administrative costs.

24 (4) A fee as described in this section is not required  
 25 for the review of subdivisions in which divisions are made

1 for the purpose of relocating common boundary lines unless  
 2 the division will result in the installation of additional  
 3 water supply or sewage disposal facilities.

4 (5) Costs of implementing this part must be paid from  
 5 the state general fund as provided by legislative  
 6 appropriation ~~and--from--the--sanitation--in--subdivisions~~  
 7 ~~special-revenue-account-established-in-{section-10}~~."

8 ~~NEW-SECTION,--Section-10,--Sanitation--in--subdivisions~~  
 9 ~~special--revenue--account,--(1)--There--is--a--sanitation-in~~  
 10 ~~subdivisions--special--revenue--account--within--the--state~~  
 11 ~~special-revenue-fund-established-in-17-2-102.~~

12 ~~(2)--There--must--be--credited--to--the--sanitation--in~~  
 13 ~~subdivision-special-revenue-account-all-fees-collected-under~~  
 14 ~~76-4-105-and-all-penalties-collected-under-76-4-109.~~

15 ~~(3)--Funds--from--the--sanitation-in--subdivisions--special~~  
 16 ~~revenue--account--may--be--used--only--to--pay--department--costs--in~~  
 17 ~~reviewing-plats-and-subdivisions.~~

18 **SECTION 10. SECTION 69-7-111, MCA, IS AMENDED TO READ:**

19 **"69-7-111. Municipal rate hearing required -- notice.**

20 (1) ~~if~~ Except as provided in [section 4], if the governing  
 21 body of a municipality considers it advisable to regulate,  
 22 establish, or change rates, charges, or classifications  
 23 imposed on its customers, it shall order a hearing to be  
 24 held before it at a time and place specified.

25 (2) Notice of the hearing shall be published in a

1 newspaper as provided in 7-1-4127.

2 (3) (a) The notice shall be published three times with  
3 at least 6 days separating each publication. The first  
4 publication may be no more than 28 days prior to the  
5 hearing, and the last publication may be no less than 3 days  
6 prior to the hearing.

7 (b) The notice must also be mailed at least 7 days and  
8 not more than 30 days prior to the hearing to persons served  
9 by the utility. The notice must be mailed within the  
10 prescribed time period. This notice must contain an estimate  
11 of the amount the customer's average bill will increase.

12 (4) The published notice must contain:

13 (a) the date, time, and place of the hearing;

14 (b) a brief statement of the proposed action; and

15 (c) the address and telephone number of a person who  
16 may be contacted for further information regarding the  
17 hearing.

18 (5) Notice of all hearings shall be mailed first class,  
19 postage prepaid, to the Montana consumer counsel."

20 **SECTION 11. SECTION 7-13-2218, MCA, IS AMENDED TO READ:**

21 **"7-13-2218. District powers related to water and sewer**  
22 **projects. Any district incorporated as provided in this part**  
23 **may:**

24 (1) construct, purchase, lease, or otherwise acquire  
25 and operate and maintain water rights, waterworks, sanitary

1 sewerworks, storm sewerworks, canals, conduits, reservoirs,  
2 lands, and rights useful or necessary to store, conserve,  
3 supply, produce, convey, or drain water or sewage for  
4 purposes beneficial to the district. Beneficial purposes  
5 include but are not limited to flood prevention, flood  
6 control, irrigation, drainage, municipal and industrial  
7 water supplies, domestic water supplies, wildlife,  
8 recreation, pollution abatement, livestock water supply, and  
9 other similar purposes.

10 (2) if the incorporators of the district are members of  
11 a private, nonprofit water association that was formed under  
12 the laws of this state, acquire by eminent domain from that  
13 water association any type of property referred to in this  
14 section;

15 (3) store water for the benefit of the district;  
16 conserve water for future use; appropriate, acquire, and  
17 conserve water and water rights for the purposes of the  
18 district; commence, maintain, intervene in, and compromise,  
19 in the name of the district, and assume the costs of any  
20 action or proceeding involving or affecting the ownership or  
21 use of waters, water rights, or sewer rights within the  
22 district used or useful for any purpose of the district or a  
23 benefit to any land situated in the district;

24 (4) commence, maintain, intervene in, defend, and  
25 compromise actions and proceedings to prevent interference

1 with or diminution of the natural flow of any stream or  
2 natural subterranean supply of waters used or useful for any  
3 purpose of the district or a common benefit to the lands  
4 within the district or its inhabitants;

5 (5) commence, maintain, and defend actions and  
6 proceedings to prevent any interference with the waters or  
7 rights referred to in this section as may endanger the  
8 inhabitants or lands of the district;

9 (6) lease from any person, firm, or public or private  
10 corporation, with the privilege of purchase or otherwise,  
11 existing water rights, waterworks, sewerworks, canals, or  
12 reservoir systems; and carry on and maintain them;

13 (7) sell water or the use of water for household or  
14 domestic or other similar purposes or sell sewer service  
15 and, whenever there is a surplus of water or sewerworks  
16 capacity, sell or otherwise dispose of the water or  
17 sewerworks capacity to municipalities or towns or to  
18 consumers located within or outside the boundaries of the  
19 district."

20 NEW SECTION. Section 12. Codification instruction. (71)  
21 [Sections 4, 6, 7, and 8] are intended to be codified as an  
22 integral part of Title 75, chapter 6, part 1, and the  
23 provisions of Title 75, chapter 6, part 1, apply to  
24 [sections 4, 6, 7, and 8].

25 {2}--{Section-10}-is--intended--to--be--codified--as--an

1 ~~integral--part-of-Title-76,chapter-4,--and-the-provisions-of~~  
2 ~~Title-76,chapter-4,--apply-to-{}section-10}.~~

3 ~~NEW-SECTION--Section-12--Effective-date--{}This-act}-is~~  
4 ~~effective-July-1,1991.~~

5 NEW SECTION. SECTION 13. TERMINATION. THE BRACKETED  
6 PORTION OF [SECTION 4(4)] TERMINATES OCTOBER 1, 1993.

-End-