

1 *Senate* BILL NO. *42*  
 2 INTRODUCED BY *Chris Turnage*  
 3 *(Interim Judiciary Committee (B:1))*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTINUE CERTAIN  
 5 IMMUNITIES FROM SUIT ESTABLISHED BY CERTAIN STATUTES BY  
 6 REENACTING THESE STATUTES UNDER PROVISIONS OF ARTICLE II,  
 7 SECTION 18, OF THE CONSTITUTION OF THE STATE OF MONTANA;  
 8 AMENDING, CLARIFYING, AND REENACTING SECTIONS 28-603,  
 9 77-2308, 89-115, AND 89-3514, R.C.M. 1947."

11 AS IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 28-603, R.C.M. 1947, is amended to  
 13 read as follows:

14 "28-603. Powers of board. (1) Boards of county  
 15 commissioners may in their discretion establish fire seasons  
 16 annually during which no person ~~shall~~ may ignite or set any  
 17 forest fire, or ~~slash-burning slash-burning~~ fire, or ~~land~~  
 18 ~~clearing land-clearing~~ fire, or ~~debris---burning~~  
 19 ~~debris-burning~~ fire, or any open fire, within any forest,  
 20 range, or crop lands, subject to the provisions of this act,  
 21 without having obtained an official written permit to ignite  
 22 or set such fire from a county rural fire chief or from a  
 23 district rural fire chief authorized by the board to issue  
 24 such permits for such lands.

25 (2) Any person who ~~shall~~-ignite ignites or set ~~sats~~

1 any forest fire, or ~~slash-burning slash-burning~~ fire, or  
 2 ~~land---clearing land-clearing~~ fire, or ~~debris---burning~~  
 3 ~~debris-burning~~ fire, or any open fire, within any forest,  
 4 range, or crop land subject to the provisions of this act  
 5 without first having obtained a written permit to ignite or  
 6 set such fire ~~shall-be~~ is guilty of a misdemeanor.

7 (3) To augment rural crews in case of serious  
 8 emergency, the boards may provide for the organization and  
 9 training of voluntary urban fire crews to be used in rural  
 10 areas.

11 (4) Any county rural fire chief and/or district rural  
 12 fire chief or his deputy may enter private property either  
 13 with-or-without or direct the entry of fire control crews  
 14 for the purpose of suppressing fires, ~~and-are-exempt-from~~  
 15 ~~any-damage-resulting-from-such-activity~~; A chief or deputy  
 16 and the county or rural district are immune from suit for  
 17 injury to persons or property resulting from actions taken  
 18 to suppress fires under this subsection.

19 (5) The board is authorized to appropriate from the  
 20 general fund of the county not to exceed ~~fifteen--thousand~~  
 21 ~~dollars--(\$15,000)~~ per year for the purchase, care, and  
 22 maintenance of fire-fighting firefighting equipment, or for  
 23 the payment of wages to skilled operators of heavy  
 24 mechanized equipment in the suppression of fires when ~~deemed~~  
 25 considered necessary; or if the general fund is budgeted to

1 the full limit, the board may at any time fixed by law for  
2 levy and assessment of taxes levy a tax at such rate as in  
3 their judgment will be necessary to raise such needed sum  
4 not to exceed ~~fifteen-thousand-dollars-(\$15,000).~~"

5 Section 2. Section 77-2308, R.C.M. 1947, is amended to  
6 read as follows:

7 "77-2308. Immunity from liability. (1) Neither the  
8 state nor any political subdivision of the state, nor the  
9 agents or representatives of the state or any political  
10 subdivision thereof, ~~shall be~~ are liable for personal injury  
11 or property damage sustained by any person appointed or  
12 acting as a volunteer civilian defense worker or member of  
13 any agency engaged in civilian defense activity during a  
14 disaster or catastrophe. This section does not affect the  
15 right of any person to receive benefits or compensation to  
16 which he might otherwise be entitled under the ~~workmen's~~  
17 ~~workers'~~ compensation law or any pension law or any act of  
18 Congress congress.

19 (2) Neither the state nor any political subdivision of  
20 the state, nor, except in cases of willful misconduct, gross  
21 negligence, or bad faith, the employees, agents, or  
22 representatives of the state or any political subdivision  
23 thereof, nor any volunteer or auxiliary civilian defense  
24 worker or member of any agency engaged in civilian defense  
25 activity during a disaster or catastrophe, nor the owners of

1 facilities used for civil defense shelters, pursuant to a  
2 fallout shelter license or privilege agreement and while  
3 complying with or reasonably attempting to comply with this  
4 chapter or any order or rule or regulation promulgated  
5 under the provisions of this chapter, or pursuant to any  
6 ordinance relating to blackout or other precautionary  
7 measures enacted by any political subdivisions of the state,  
8 ~~shall be~~ are liable for the death of or injury to persons  
9 or for damage to property, as a result of any such  
10 activity."

11 Section 3. Section 89-115, R.C.M. 1947, is amended to  
12 read as follows:

13 "89-115. Water funds -- rates -- sale of water --  
14 appeals to board -- lease and sale of water rights and  
15 property. (1) Subject to this act and section 89-103.2, the  
16 department may fix and establish the prices, rates, and  
17 charges at which the resources and facilities made available  
18 under this act may be sold and disposed of, and enter into  
19 contracts and agreements, and do those things which in its  
20 judgment are necessary, convenient, or expedient for the  
21 accomplishment of the purposes and objects of this act,  
22 under such general regulations, and upon such terms,  
23 limitations, and conditions as it prescribes, ~~the~~ The  
24 department shall enter into the contracts and fix and  
25 establish the prices, rates, and charges so as to provide at

1 all times funds which will be sufficient to pay all costs of  
 2 operation and maintenance of the works authorized by this  
 3 act, together with necessary repairs thereto, and which will  
 4 provide at all times sufficient funds to meet and pay the  
 5 principal and interest of all bonds or loans as they  
 6 severally become due and payable; ~~this~~ this act does not  
 7 authorize any change, alteration, or revision of those  
 8 rates, prices, or charges as established by any contract  
 9 entered into under this act except as provided by the  
 10 contract.

11 (2) An incorporated water users' association that is  
 12 sustaining and responsible for the operations of a works is  
 13 solely liable for any court action which may be brought  
 14 against it ~~or the state of Montana~~ for any injury or damages  
 15 occurring on the works caused by a failure to maintain safe  
 16 working and operating conditions. The state of Montana is  
 17 not liable for injury to a person or property that occurs on  
 18 a works as a result of a failure by a water users'  
 19 association to maintain the works in a safe working and  
 20 operating condition.

21 (3) A contract made by the department for the sale of  
 22 water, use of water, water storage, or other service, or for  
 23 the sale of any property or facilities, shall provide that  
 24 in the event of a failure or default in the payment of  
 25 moneys specified in the contract to be paid to the

1 department, the department may, upon notice as is prescribed  
 2 in the contract, terminate the contract and all obligations  
 3 thereunder. The act of the department in ceasing on default  
 4 to furnish or deliver water, use of water, water storage, or  
 5 other service under the contract does not deprive the  
 6 department of, or limit any remedy provided by the contract  
 7 or by law for the recovery of moneys due or which may become  
 8 due under the contract.

9 (4) (a) A person aggrieved by a decision of the  
 10 department to terminate any contract under subsection (3)  
 11 may appeal to the board and be heard thereon by filing  
 12 written notice of the appeal with the department within ten  
 13 ~~(10)~~ days after receiving notice of termination of the  
 14 contract from the department. The termination of the  
 15 contract ~~shall be~~ is stayed if an appeal is taken.

16 (b) If a dispute arises between the department and  
 17 another party regarding amounts owing or the terms and  
 18 conditions under a water marketing or water purchase  
 19 contract, or under a contract for the construction or repair  
 20 of works, that party may appeal to the board for a hearing  
 21 thereon and a resolution of the dispute by filing written  
 22 notice of the appeal with the department within ~~thirty~~ ~~(30)~~  
 23 days after the final decision of the department regarding  
 24 the dispute.

25 (5) Subject to the approval of the board under section

1 89-103.2, the department may sell, transfer to water user  
 2 associations, abandon, or otherwise dispose of any rights-of  
 3 way ~~rights-of-way~~, easements, or property when it determines  
 4 that they are no longer needed for the purposes of this act,  
 5 or lease or rent the same or otherwise take and receive the  
 6 income or profit and revenue therefrom. A determination  
 7 shall be made by the department as to the market value of  
 8 ~~rights-of-way~~ ~~rights-of-way~~, easements, or property to be  
 9 sold, transferred, abandoned, or otherwise disposed of. All  
 10 income or profit and revenue of the works and all moneys  
 11 received from the sale or disposal of water, use of water,  
 12 water storage, or other service, and from the operation,  
 13 lease, sale, or other disposition of the works, property,  
 14 and facilities acquired under this act, shall be deposited  
 15 to the state general fund."

16 Section 4. Section 89-3514, R.C.M. 1947, is amended to  
 17 read as follows:

18 "89-3514. Permit construed as added requirement --  
 19 exception -- immunity. (1) The granting of a permit under  
 20 this act does not affect any other type of approval required  
 21 by any other statute or ordinance of the state, of any  
 22 political subdivision, or of the United States, but is an  
 23 added requirement; however, if a political subdivision  
 24 enacts, in harmony with the purposes of this act, permit  
 25 issuance ordinances, regulations, or resolutions and

1 land-use ordinances, regulations, or resolutions which meet  
 2 or exceed the minimum standards of the board, and if the  
 3 administrative and enforcement procedures established for  
 4 those ordinances, regulations, or resolutions are found  
 5 acceptable by the board, no permit from the department is  
 6 required; however, if the board determines that there is a  
 7 failure by a political subdivision to comply with the  
 8 intent, purposes, and provisions of this act and the minimum  
 9 standards adopted thereunder, the powers of the political  
 10 subdivision may be suspended after hearing, and the minimum  
 11 standards adopted by the board shall be enforced by the  
 12 department until such time as the board determines that the  
 13 political subdivision will comply. The grant or denial of a  
 14 permit does not have an effect on a remedy of a person at  
 15 law or in equity; however, where it is shown that there is a  
 16 wrongful failure to comply with this act, there is a  
 17 rebuttable presumption that the obstruction was the  
 18 proximate cause of the flooding of the land of a person  
 19 bringing suit.

20 (2) An action for damages sustained because of injury  
 21 caused by an obstruction for which a permit has been granted  
 22 under this act may not be brought against the state, the  
 23 board, a member of the board, or the department. This act  
 24 does not interfere with the right of the United States to  
 25 regulate interstate commerce or the navigable waters of the

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1 United States."

-End-

Approved by Committee on Judiciary

1 *Senators* BILL NO. *42*  
2 INTRODUCED BY *Lowie Turnage*  
3 *(Interim Judiciary Committee Bill)*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTINUE CERTAIN  
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18 ~~clearing land-clearing~~ fire, or ~~debris---burning~~  
19 ~~debris-burning~~ fire, or any open fire, within any forest,  
20 range, or crop lands, subject to the provisions of this act,  
21 without having obtained an official written permit to ignite  
22 or set such fire from a county rural fire chief or from a  
23 district rural fire chief authorized by the board to issue  
24 such permits for such lands.

25 (2) Any person who ~~shall~~ ignite ignites or set sets

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4 range, or crop land subject to the provisions of this act  
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6 set such fire ~~shall~~ is guilty of a misdemeanor.

7 (3) To augment rural crews in case of serious  
8 emergency, the boards may provide for the organization and  
9 training of voluntary urban fire crews to be used in rural  
10 areas.

11 (4) Any county rural fire chief ~~and/or~~ district rural  
12 fire chief or his deputy may enter private property ~~either~~  
13 ~~with or without~~ or direct the entry of fire control crews  
14 for the purpose of suppressing fires, ~~and are exempt from~~  
15 ~~any damage resulting from such activity;~~ A chief or deputy  
16 and the county or rural district are immune from suit for  
17 injury to persons or property resulting from actions taken  
18 to suppress fires under this subsection.

19 (5) The board is authorized to appropriate from the  
20 general fund of the county not to exceed ~~fifteen--thousand~~  
21 ~~dollars--(\$15,000)~~ per year for the purchase, care, and  
22 maintenance of ~~fire-fighting firefighting~~ equipment, or for  
23 the payment of wages to skilled operators of heavy  
24 mechanized equipment in the suppression of fires when deemed  
25 considered necessary; or if the general fund is budgeted to

1 the full limit, the board may at any time fixed by law for  
 2 levy and assessment of taxes levy a tax at such rate as in  
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 9 agents or representatives of the state or any political  
 10 subdivision thereof, ~~shall be~~ are liable for personal injury  
 11 or property damage sustained by any person appointed or  
 12 acting as a volunteer civilian defense worker or member of  
 13 any agency engaged in civilian defense activity during a  
 14 disaster or catastrophe. This section does not affect the  
 15 right of any person to receive benefits or compensation to  
 16 which he might otherwise be entitled under the workmen's  
 17 workers' compensation law or any pension law or any act of  
 18 Congress congress.

19 (2) Neither the state nor any political subdivision of  
 20 the state, nor, except in cases of willful misconduct, gross  
 21 negligence, or bad faith, the employees, agents, or  
 22 representatives of the state or any political subdivision  
 23 thereof, nor any volunteer or auxiliary civilian defense  
 24 worker or member of any agency engaged in civilian defense  
 25 activity during a disaster or catastrophe, nor the owners of

1 facilities used for civil defense shelters, pursuant to a  
 2 fallout shelter license or privilege agreement and while  
 3 complying with or reasonably attempting to comply with this  
 4 chapter, or any order or rule, ~~or regulation~~ promulgated  
 5 under the provisions of this chapter, or pursuant to any  
 6 ordinance relating to blackout or other precautionary  
 7 measures enacted by any political subdivisions of the state,  
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11 Section 3. Section 89-115, R.C.M. 1947, is amended to  
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13 "89-115. Water funds -- rates -- sale of water --  
 14 appeals to board -- lease and sale of water rights and  
 15 property. (1) Subject to this act and ~~section~~ 89-103.2, the  
 16 department may fix and establish the prices, rates, and  
 17 charges at which the resources and facilities made available  
 18 under this act may be sold and disposed of and enter into  
 19 contracts and agreements, and do those things which in its  
 20 judgment are necessary, convenient, or expedient for the  
 21 accomplishment of the purposes and objects of this act,  
 22 under such general regulations, and upon such terms,  
 23 limitations, and conditions as it prescribes, ~~the~~ The  
 24 department shall enter into the contracts and fix and  
 25 establish the prices, rates, and charges so as to provide at

1 all times funds which will be sufficient to pay all costs of  
 2 operation and maintenance of the works authorized by this  
 3 act, together with necessary repairs thereto, and which will  
 4 provide at all times sufficient funds to meet and pay the  
 5 principal and interest of all bonds or loans as they  
 6 severally become due and payable. ~~this~~ this act does not  
 7 authorize any change, alteration, or revision of those  
 8 rates, prices, or charges as established by any contract  
 9 entered into under this act except as provided by the  
 10 contract.

11 (2) An incorporated water users' association that is  
 12 sustaining and responsible for the operations of a works is  
 13 solely liable for any court action which may be brought  
 14 against it ~~or the state of Montana~~ for any injury or damages  
 15 occurring on the works caused by a failure to maintain safe  
 16 working and operating conditions. The state of Montana is  
 17 not liable for injury to a person or property that occurs on  
 18 a works as a result of a failure by a water users'  
 19 association to maintain the works in a safe working and  
 20 operating condition.

21 (3) A contract made by the department for the sale of  
 22 water, use of water, water storage, or other service, or for  
 23 the sale of any property or facilities, shall provide that  
 24 in the event of a failure or default in the payment of  
 25 moneys specified in the contract to be paid to the

1 department, the department may, upon notice as is prescribed  
 2 in the contract, terminate the contract and all obligations  
 3 thereunder. The act of the department in ceasing on default  
 4 to furnish or deliver water, use of water, water storage, or  
 5 other service under the contract does not deprive the  
 6 department of, or limit any remedy provided by the contract  
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9 (4) (a) A person aggrieved by a decision of the  
 10 department to terminate any contract under subsection (3)  
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 13 ~~(10)~~ days after receiving notice of termination of the  
 14 contract from the department. The termination of the  
 15 contract ~~shall be~~ is stayed if an appeal is taken.

16 (b) If a dispute arises between the department and  
 17 another party regarding amounts owing or the terms and  
 18 conditions under a water marketing or water purchase  
 19 contract, or under a contract for the construction or repair  
 20 of works, that party may appeal to the board for a hearing  
 21 thereon and a resolution of the dispute by filing written  
 22 notice of the appeal with the department within ~~thirty~~ ~~(30)~~  
 23 days after the final decision of the department regarding  
 24 the dispute.

25 (5) Subject to the approval of the board under section



1 89-103.2, the department may sell, transfer to water user  
 2 associations, abandon<sub>2</sub> or otherwise dispose of any ~~rights-of~~  
 3 ~~way rights-of-way~~, easements<sub>2</sub> or property when it determines  
 4 that they are no longer needed for the purposes of this act  
 5 or lease or rent the same or otherwise take and receive the  
 6 income or profit and revenue therefrom. A determination  
 7 shall be made by the department as to the market value of  
 8 ~~rights-of-way~~ ~~rights-of-way~~, easements<sub>2</sub> or property to be  
 9 sold, transferred, abandoned<sub>2</sub> or otherwise disposed of. All  
 10 income or profit and revenue of the works and all moneys  
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 12 water storage, or other service, and from the operation,  
 13 lease, sale<sub>2</sub> or other disposition of the works, property<sub>2</sub>  
 14 and facilities acquired under this act, shall be deposited  
 15 to the state general fund."

16 Section 4. Section 89-3514, R.C.M. 1947, is amended to  
 17 read as follows:

18 "89-3514. Permit construed as added requirement --  
 19 exception -- immunity. (1) The granting of a permit under  
 20 this act does not affect any other type of approval required  
 21 by any other statute or ordinance of the state, of any  
 22 political subdivision<sub>2</sub> or of the United States, but is an  
 23 added requirement; however, if a political subdivision  
 24 enacts<sub>2</sub> in harmony with the purposes of this act<sub>2</sub> permit  
 25 issuance ordinances, regulations<sub>2</sub> or resolutions and

1 land-use ordinances, regulations<sub>2</sub> or resolutions which meet  
 2 or exceed the minimum standards of the board, and if the  
 3 administrative and enforcement procedures established for  
 4 those ordinances, regulations, or resolutions are found  
 5 acceptable by the board, no permit from the department is  
 6 required; however, if the board determines that there is a  
 7 failure by a political subdivision to comply with the  
 8 intent, purposes<sub>2</sub> and provisions of this act and the minimum  
 9 standards adopted thereunder, the powers of the political  
 10 subdivision may be suspended after hearing, and the minimum  
 11 standards adopted by the board shall be enforced by the  
 12 department until such time as the board determines that the  
 13 political subdivision will comply. The grant or denial of a  
 14 permit does not have an effect on a remedy of a person at  
 15 law or in equity; however, where it is shown that there is a  
 16 wrongful failure to comply with this act, there is a  
 17 rebuttable presumption that the obstruction was the  
 18 proximate cause of the flooding of the land of a person  
 19 bringing suit.

20 (2) An action for damages sustained because of injury  
 21 caused by an obstruction for which a permit has been granted  
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 24 does not interfere with the right of the United States to  
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-End-

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 20 range~~s~~ or crop lands~~v~~ subject to the provisions of this act~~y~~  
 21 without having obtained an official written permit to ignite  
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 23 district rural fire chief authorized by the board to issue  
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 13 any agency engaged in civilian defense activity during a  
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 15 right of any person to receive benefits or compensation to  
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19 (2) Neither the state nor any political subdivision of  
 20 the state, nor, except in cases of willful misconduct, gross  
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 22 representatives of the state or any political subdivision  
 23 thereof, nor any volunteer or auxiliary civilian defense  
 24 worker or member of any agency engaged in civilian defense  
 25 activity during a disaster or catastrophe, nor the owners of

1 facilities used for civil defense shelters, pursuant to a  
 2 fallout shelter license or privilege agreement and while  
 3 complying with or reasonably attempting to comply with this  
 4 chapter, or any order, or rule, or regulation promulgated  
 5 under the provisions of this chapter, or pursuant to any  
 6 ordinance relating to blackout or other precautionary  
 7 measures enacted by any political subdivisions of the state,  
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 3 act, together with necessary repairs thereto, and which will  
 4 provide at all times sufficient funds to meet and pay the  
 5 principal and interest of all bonds or loans as they  
 6 severally become due and payable, ~~this~~ this act does not  
 7 authorize any change, alteration, or revision of those  
 8 rates, prices, or charges as established by any contract  
 9 entered into under this act except as provided by the  
 10 contract.

11 (2) An incorporated water users' association that is  
 12 sustaining and responsible for the operations of a works is  
 13 solely liable for any court action which may be brought  
 14 against it ~~or the state of Montana~~ for any injury or damages  
 15 occurring on the works caused by a failure to maintain safe  
 16 working and operating conditions. The state of Montana is  
 17 not liable for injury to a person or property that occurs on  
 18 a works as a result of a failure by a water users'  
 19 association to maintain the works in a safe working and  
 20 operating condition.

21 (3) A contract made by the department for the sale of  
 22 water, use of water, water storage, or other service, or for  
 23 the sale of any property or facilities, shall provide that  
 24 in the event of a failure or default in the payment of  
 25 moneys specified in the contract to be paid to the

1 department, the department may, upon notice as is prescribed  
 2 in the contract, terminate the contract and all obligations  
 3 thereunder. The act of the department in ceasing on default  
 4 to furnish or deliver water, use of water, water storage, or  
 5 other service under the contract does not deprive the  
 6 department of, or limit any remedy provided by the contract  
 7 or by law for the recovery of moneys due or which may become  
 8 due under the contract.

9 (4) (a) A person aggrieved by a decision of the  
 10 department to terminate any contract under subsection (3)  
 11 may appeal to the board and be heard thereon by filing  
 12 written notice of the appeal with the department within ~~ten~~  
 13 ~~{10}~~ days after receiving notice of termination of the  
 14 contract from the department. The termination of the  
 15 contract ~~shall be~~ is stayed if an appeal is taken.

16 (b) If a dispute arises between the department and  
 17 another party regarding amounts owing or the terms and  
 18 conditions under a water marketing or water purchase  
 19 contract, or under a contract for the construction or repair  
 20 of works, that party may appeal to the board for a hearing  
 21 thereon and a resolution of the dispute by filing written  
 22 notice of the appeal with the department within ~~thirty--{30}~~  
 23 days after the final decision of the department regarding  
 24 the dispute.

25 (5) Subject to the approval of the board under section

1 89-103.2, the department may sell, transfer to water user  
 2 associations, abandon<sub>2</sub> or otherwise dispose of any ~~rights-of~~  
 3 ~~way rights-of-way~~, easements<sub>2</sub> or property when it determines  
 4 that they are no longer needed for the purposes of this act  
 5 or lease or rent the same or otherwise take and receive the  
 6 income or profit and revenue therefrom. A determination  
 7 shall be made by the department as to the market value of  
 8 ~~rights-of-way rights-of-way~~, easements<sub>2</sub> or property to be  
 9 sold, transferred, abandoned<sub>2</sub> or otherwise disposed of. All  
 10 income or profit and revenue of the works and all moneys  
 11 received from the sale or disposal of water, use of water,  
 12 water storage, or other service, and from the operation,  
 13 lease, sale<sub>2</sub> or other disposition of the works, property<sub>2</sub>  
 14 and facilities acquired under this act, shall be deposited  
 15 to the state general fund."

16 Section 4. Section 89-3514, R.C.M. 1947, is amended to  
 17 read as follows:

18 "89-3514. Permit construed as added requirement --  
 19 exception -- immunity. (1) The granting of a permit under  
 20 this act does not affect any other type of approval required  
 21 by any other statute or ordinance of the state, of any  
 22 political subdivision<sub>2</sub> or of the United States, but is an  
 23 added requirement; however, if a political subdivision  
 24 enacts<sub>2</sub> in harmony with the purposes of this act, permit  
 25 issuance ordinances, regulations<sub>2</sub> or resolutions and

1 land-use ordinances, regulations<sub>2</sub> or resolutions which meet  
 2 or exceed the minimum standards of the board, and if the  
 3 administrative and enforcement procedures established for  
 4 those ordinances, regulations, or resolutions are found  
 5 acceptable by the board, no permit from the department is  
 6 required; however, if the board determines that there is a  
 7 failure by a political subdivision to comply with the  
 8 intent, purposes<sub>2</sub> and provisions of this act and the minimum  
 9 standards adopted thereunder, the powers of the political  
 10 subdivision may be suspended after hearing, and the minimum  
 11 standards adopted by the board shall be enforced by the  
 12 department until such time as the board determines that the  
 13 political subdivision will comply. The grant or denial of a  
 14 permit does not have an effect on a remedy of a person at  
 15 law or in equity; however, where it is shown that there is a  
 16 wrongful failure to comply with this act, there is a  
 17 rebuttable presumption that the obstruction was the  
 18 proximate cause of the flooding of the land of a person  
 19 bringing suit.

20 (2) An action for damages sustained because of injury  
 21 caused by an obstruction for which a permit has been granted  
 22 under this act may not be brought against the state, the  
 23 board, a member of the board, or the department. This act  
 24 does not interfere with the right of the United States to  
 25 regulate interstate commerce or the navigable waters of the

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United States.\*

-End-

1                   SENATE BILL NO. 42  
2                   INTRODUCED BY TOWE, TURNAGE  
3                   (Interim Judiciary Committee Bill)  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONTINUE CERTAIN  
6 IMMUNITIES FROM SUIT ESTABLISHED BY CERTAIN STATUTES BY  
7 REENACTING THESE STATUTES UNDER PROVISIONS OF ARTICLE II,  
8 SECTION 18, OF THE CONSTITUTION OF THE STATE OF MONTANA;  
9 AMENDING, CLARIFYING, AND REENACTING SECTIONS 28-603,  
10 77-2308, 89-115, AND 89-3514, R.C.M. 1947."  
11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
13       Section 1. Section 28-603, R.C.M. 1947, is amended to  
14 read as follows:  
15       "28-603. Powers of board. (1) Boards of county  
16 commissioners may in their discretion establish fire seasons  
17 annually during which no person ~~shall~~ may ignite or set any  
18 forest fire, ~~or slash-burning slash-burning~~ fire, or ~~land~~  
19 ~~clearing~~ land-clearing fire, or ~~debris--burning~~  
20 ~~debris-burning~~ fire, or any open fire~~v~~ within any forest,  
21 range~~s~~, or crop lands~~y~~ subject to the provisions of this act~~v~~  
22 without having obtained an official written permit to ignite  
23 or set such fire from a county rural fire chief or from a  
24 district rural fire chief authorized by the board to issue  
25 such permits for such lands~~s~~.

1                   (2) Any person who ~~shall-ignite~~ ignites or ~~set sets~~  
2 any forest fire, ~~or slash--burning slash-burning~~ fire, or  
3 ~~land---clearing~~ land-clearing fire, or ~~debris--burning~~  
4 ~~debris-burning~~ fire, or any open fire~~v~~ within any forest,  
5 range~~s~~, or crop land subject to the provisions of this act  
6 without first having obtained a written permit to ignite or  
7 set such fire ~~shall-be~~ is guilty of a misdemeanor~~s~~.  
8                   (3) To augment rural crews in case of serious  
9 emergency~~s~~, the boards may provide for the organization and  
10 training of voluntary urban fire crews to be used in rural  
11 areas~~s~~.  
12                   (4) Any county rural fire chief ~~and/or~~ district rural  
13 fire chief or his deputy may enter private property ~~either~~  
14 ~~with-or-without~~ or direct the entry of fire control crews  
15 for the purpose of suppressing fires~~v~~, ~~and-are-exempt-from~~  
16 ~~any-damage-resulting-from-such-activity~~ A chief or deputy  
17 and the county or rural district are immune from suit for  
18 injury to persons or property resulting from actions taken  
19 to suppress fires under this subsection.  
20                   (5) The board is authorized to appropriate from the  
21 general fund of the county not to exceed ~~fifteen--thousand~~  
22 ~~dollars--(\$15,000)~~ per year for the purchase, care~~s~~ and  
23 maintenance of ~~fire-fighting~~ firefighting equipment~~v~~ or for  
24 the payment of wages to skilled operators of heavy  
25 mechanized equipment in the suppression of fires when deemed



1 ~~considered~~ necessary; or if the general fund is budgeted to  
 2 the full limit, the board may at any time fixed by law for  
 3 levy and assessment of taxes levy a tax at such rate as in  
 4 their judgment will be necessary to raise such needed sum  
 5 not to exceed ~~fifteen-thousand-dollars-(\$15,000).~~"

6 Section 2. Section 77-2308, R.C.M. 1947, is amended to  
 7 read as follows:

8 "77-2308. Immunity from liability. (1) Neither the  
 9 state nor any political subdivision of the state nor the  
 10 agents or representatives of the state or any political  
 11 subdivision thereof, ~~shall be~~ are liable for personal injury  
 12 or property damage sustained by any person appointed or  
 13 acting as a volunteer civilian defense worker, or member of  
 14 any agency engaged in civilian defense activity during a  
 15 disaster or catastrophe. This section does not affect the  
 16 right of any person to receive benefits or compensation to  
 17 which he might otherwise be entitled under the ~~workmen's~~  
 18 ~~workers'~~ compensation law or any pension law or any act of  
 19 Congress ~~congress~~.

20 (2) Neither the state nor any political subdivision of  
 21 the state, nor, except in cases of willful misconduct, gross  
 22 negligence, or bad faith, the employees, agents, or  
 23 representatives of the state or any political subdivision  
 24 thereof, nor any volunteer or auxiliary civilian defense  
 25 worker or member of any agency engaged in civilian defense

1 activity during a disaster or catastrophe, nor the owners of  
 2 facilities used for civil defense shelters, pursuant to a  
 3 fallout shelter license or privilege agreement and while  
 4 complying with or reasonably attempting to comply with this  
 5 chapter or any order, ~~or rule or regulation~~ promulgated  
 6 under the provisions of this chapter or pursuant to any  
 7 ordinance relating to blackout or other precautionary  
 8 measures enacted by any political subdivisions of the state,  
 9 ~~shall be~~ are liable for the death of or injury to persons  
 10 or for damage to property as a result of any such  
 11 activity."

12 Section 3. Section 89-115, R.C.M. 1947, is amended to  
 13 read as follows:

14 "89-115. Water funds -- rates -- sale of water --  
 15 appeals to board -- lease and sale of water rights and  
 16 property. (1) Subject to this act and ~~section~~ 89-103.2, the  
 17 department may fix and establish the prices, rates, and  
 18 charges at which the resources and facilities made available  
 19 under this act may be sold and disposed of, ~~and~~ enter into  
 20 contracts and agreements, and do those things which in its  
 21 judgment are necessary, convenient, or expedient for the  
 22 accomplishment of the purposes and objects of this act,  
 23 under such general regulations, and upon such terms,  
 24 limitations, and conditions as it prescribes, ~~the~~ the ~~the~~  
 25 department shall enter into the contracts and fix and

1 establish the prices, rates, and charges so as to provide at  
 2 all times funds which will be sufficient to pay all costs of  
 3 operation and maintenance of the works authorized by this  
 4 act, together with necessary repairs thereto, and which will  
 5 provide at all times sufficient funds to meet and pay the  
 6 principal and interest of all bonds or loans as they  
 7 severally become due and payable; ~~this~~ this act does not  
 8 authorize any change, alteration, or revision of those  
 9 rates, prices, or charges as established by any contract  
 10 entered into under this act except as provided by the  
 11 contract.

12 (2) An incorporated water users' association that is  
 13 sustaining and responsible for the operations of a works is  
 14 solely liable for any court action which may be brought  
 15 against it ~~or the state of Montana~~ for any injury or damages  
 16 occurring on the works caused by a failure to maintain safe  
 17 working and operating conditions. The state of Montana is  
 18 not liable for injury to a person or property that occurs on  
 19 a works as a result of a failure by a water users'  
 20 association to maintain the works in a safe working and  
 21 operating condition.

22 (3) A contract made by the department for the sale of  
 23 water, use of water, water storage, or other service, or for  
 24 the sale of any property or facilities, shall provide that  
 25 in the event of a failure or default in the payment of

1 moneys specified in the contract to be paid to the  
 2 department, the department may, upon notice as is prescribed  
 3 in the contract, terminate the contract and all obligations  
 4 thereunder. The act of the department in ceasing on default  
 5 to furnish or deliver water, use of water, water storage, or  
 6 other service under the contract does not deprive the  
 7 department of, or limit any remedy provided by the contract  
 8 or by law for the recovery of moneys due or which may become  
 9 due under the contract.

10 (4) (a) A person aggrieved by a decision of the  
 11 department to terminate any contract under subsection (3)  
 12 may appeal to the board and be heard thereon by filing  
 13 written notice of the appeal with the department within ten  
 14 ~~(10)~~ days after receiving notice of termination of the  
 15 contract from the department. The termination of the  
 16 contract ~~shall be~~ is stayed if an appeal is taken.

17 (b) If a dispute arises between the department and  
 18 another party regarding amounts owing or the terms and  
 19 conditions under a water marketing or water purchase  
 20 contract, or under a contract for the construction or repair  
 21 of works, that party may appeal to the board for a hearing  
 22 thereon and a resolution of the dispute by filing written  
 23 notice of the appeal with the department within ~~thirty~~ (30)  
 24 days after the final decision of the department regarding  
 25 the dispute.

1 (5) Subject to the approval of the board under section  
 2 89-103.2, the department may sell, transfer to water user  
 3 associations, abandon<sub>1</sub> or otherwise dispose of any ~~rights-of-~~  
 4 ~~way rights-of-way~~, easements<sub>1</sub> or property when it determines  
 5 that they are no longer needed for the purposes of this act  
 6 or lease or rent the same or otherwise take and receive the  
 7 income or profit and revenue therefrom. A determination  
 8 shall be made by the department as to the market value of  
 9 ~~rights-of-way rights-of-way~~, easements<sub>1</sub> or property to be  
 10 sold, transferred, abandoned<sub>2</sub> or otherwise disposed of. All  
 11 income or profit and revenue of the works and all moneys  
 12 received from the sale or disposal of water, use of water,  
 13 water storage, or other service, and from the operation,  
 14 lease, sale<sub>1</sub> or other disposition of the works, property<sub>1</sub>  
 15 and facilities acquired under this act shall be deposited  
 16 to the state general fund."

17 Section 4. Section 89-3514, R.C.M. 1947, is amended to  
 18 read as follows:

19 "89-3514. Permit construed as added requirement --  
 20 exception -- immunity. (1) The granting of a permit under  
 21 this act does not affect any other type of approval required  
 22 by any other statute or ordinance of the state, of any  
 23 political subdivision<sub>1</sub> or of the United States, but is an  
 24 added requirement; however, if a political subdivision  
 25 enacts<sub>1</sub> in harmony with the purposes of this act<sub>1</sub> permit

1 issuance ordinances, regulations<sub>1</sub> or resolutions and  
 2 land-use ordinances, regulations<sub>1</sub> or resolutions which meet  
 3 or exceed the minimum standards of the board, and if the  
 4 administrative and enforcement procedures established for  
 5 those ordinances, regulations, or resolutions are found  
 6 acceptable by the board, no permit from the department is  
 7 required; however, if the board determines that there is a  
 8 failure by a political subdivision to comply with the  
 9 intent, purposes<sub>1</sub> and provisions of this act and the minimum  
 10 standards adopted thereunder, the powers of the political  
 11 subdivision may be suspended after hearing, and the minimum  
 12 standards adopted by the board shall be enforced by the  
 13 department until such time as the board determines that the  
 14 political subdivision will comply. The grant or denial of a  
 15 permit does not have an effect on a remedy of a person at  
 16 law or in equity; however, where it is shown that there is a  
 17 wrongful failure to comply with this act, there is a  
 18 rebuttable presumption that the obstruction was the  
 19 proximate cause of the flooding of the land of a person  
 20 bringing suit.

21 (2) An action for damages sustained because of injury  
 22 caused by an obstruction for which a permit has been granted  
 23 under this act may not be brought against the state, the  
 24 board, a member of the board, or the department. This act  
 25 does not interfere with the right of the United States to

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1 regulate interstate commerce or the navigable waters of the  
2 United States."

-End-