

House Bill 551

In The House

January 28, 1981	Introduced and referred to Committee on Water.
January 31, 1981	Fiscal note requested.
February 5, 1981	Fiscal note returned.
February 20, 1981	Committee recommend bill do pass as amended.
February 21, 1981	Bill printed and placed on members' desks.
	Motion pass consideration.
	Rerefereed to Committee on Water.
February 23, 1981	Committee recommend bill do not pass.

HOUSE BILL NO. 551

INTRODUCED BY Kenneth Stinson

BY REQUEST OF

THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PUBLIC  
INTEREST CRITERION FOR THE ISSUANCE OF WATER RIGHT PERMITS;  
AMENDING SECTION 85-2-311, MCA; PROVIDING RETROACTIVE  
APPLICATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-311, NCA, is amended to read:

\*85-2-311. Criteria for issuance of permits. The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply:

(3) at times when the water can be put to the use proposed by the applicant;

(b) in the amount the applicant seeks to appropriate;

and

(c) throughout the period during which the applicant

seeks to appropriate, the amount requested is available;  
(2) the rights of a prior appropriator will not be

adversely affected;

(3) the proposed means of diversion or construction

1 are adequate;

- 2 (4) the proposed use of water is a beneficial use;
- 3 (5) the proposed use will not interfere unreasonably
- 4 with other planned uses or developments for which a permit
- 5 has been issued or for which water has been reserved;

6        161. (a) in the case of an application involving the  
7 use of 3,000 or more acre-feet of water per year, 5 or more  
8 cubic feet per second of water, or 50% of the median monthly  
9 flow in the source of supply for each month for which a  
10 permit to divert water is requested, the proposed use of  
11 water is in the public interest. In determining if the  
12 proposed use is in the public interest, the department shall  
13 consider:

14           iii. the benefits to the applicant and the state;  
15           iv. the economic feasibility of the project;  
16           v. the effects on the quality and potability of  
17       water of existing beneficial uses in the source of supply;  
18       and

19 live the effects on private property rights by the  
20 creation of or contribution to saline seep.

111. The department may deny the application under this  
112. subsection (6) only if it finds by clear and convincing  
113. evidence that the public interests served by denial clearly  
114. outweigh the benefits that the permit if issued would confer  
115. upon the applicant; and

INTRODUCED BILL

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1        ~~to~~ an applicant for an appropriation of 10,000  
2        acre-feet a year or more or 15 cubic feet per second or more  
3        proves by clear and convincing evidence that the rights of a  
4        prior appropriator will not be adversely affected.

5        **Section 2. Applicability.** This act applies to  
6        applications pending with the department on the effective  
7        date of this act as well as applications filed with the  
8        department after the effective date of this act.

9        **Section 3. Effective date.** This act is effective on  
10      passage and approval.

-End-

## STATE OF MONTANA

REQUEST NO. 272-81

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 2, 1981, there is hereby submitted a Fiscal Note for House Bill 551 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation:

House Bill 551 would add an additional criteria of public interest for the issuance of water-right Provisional Permits for only those appropriations greater than 3,000 acre-feet and 5 cfs, or more than 50 percent of the median monthly flow for the month diversion occurs. Such application would be denied by the department on the basis of nonpublic interest only if there was clear and convincing evidence of such.

Assumptions:

(1) It is assumed that the proposed bill would affect about 15 to 20 applications for water-use permit per year. This is assuming that both criteria of 3,000 acre-feet and 5 cfs are met.

(2) In addition to the estimate given, some time by existing professional staff, such as an economist, soils scientist, hydrologist, water-quality specialists, would be spent. The time spent by all would add up to about .5 FTE.

Fiscal Impact:

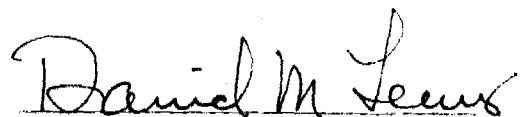
Increased expenditures under the proposed law--	FY 82	FY 83
Personal services	\$20,500	\$23,000
Operating expenses	25,000	28,000
Equipment	2,000	- 0 -
Total expenditures under proposed law	\$47,500	\$51,000
General fund	\$47,500	\$51,000

Long-Range Impact:

The expenditure of about \$50,000 per year would continue after FY 1982.

Technical Notes:

It should be made clear that 3,000 acre-feet and 5 cfs are the lower limits for which the public interest criteria is meant. Suggest page 2, line 7, add "and" after "year" and before "5."

  
Daniel M. Lewis  
BUDGET DIRECTOR  
Office of Budget and Program Planning  
Date: 2-5-81

Approved by the Select  
Committee on Water

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

13 Section 1. Section 85-2-311, MCA, is amended to read:

14 "85-2-311. Criteria for issuance of permit. The

15 department shall issue a permit if:

16 (1) there are unappropriated waters in the source of

17 supply:

18 (a) at times when the water can be put to the use

19 proposed by the applicant;

20 (b) in the amount the applicant seeks to appropriate;

21 and

22 (c) throughout the period during which the applicant

23 seeks to appropriate, the amount requested is available;

24 (2) the rights of a prior appropriator will not be

25 adversely affected;

(3) the proposed means of diversion or construction are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) (a) in the case of an application involving the use of 3,000 or more acre-feet of water per year AND 5 or more cubic feet per second of water, or 50% of the median monthly flow in the source of supply for each month for which a permit to divert water is requested, the proposed use of water is in the public interest. In determining if the proposed use is in the public interest the department shall consider AND PROVIDE EVIDENCE ON:

(i) the benefits to the applicant and the state;

(ii) the economic feasibility of the project;

(iii) the effects on the quality and potability of water of existing beneficial uses in the source of supply; and

(iv) the effects on private property rights by the creation of or contribution to saline seep.

(b) The department may deny the application SHALL ISSUE THE PERMIT under this subsection (6) only if it UNLESS THE DEPARTMENT finds by clear and convincing evidence that the public-interests-served BENEFITS OF EXISTING WATER USES

1    OR PRIVATE PROPERTY RIGHTS PROTECTED by denial clearly  
2    outweigh the benefits that the permit if issued would confer  
3    upon the applicant OR UNLESS NO EVIDENCE IS PROVIDED UNDER  
4    THIS SUBSECTION (6) FOR THE DEPARTMENT TO CONSIDER; and

5        ~~(6)(7)~~ an applicant for an appropriation of 10,000  
6    acre-feet a year or more or 15 cubic feet per second or more  
7    proves by clear and convincing evidence that the rights of a  
8    prior appropriator will not be adversely affected."

9        Section 2. Applicability. This act applies to  
10   applications pending with the department on the effective  
11   date of this act as well as applications filed with the  
12   department after the effective date of this act.

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14   passage and approval.

-End-