

House Bill 551

In The House

| | |
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| 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. |
| | Rereferred to Committee on Water. |
| February 23, 1981 | Committee recommend bill do not pass. |

1 HOUSE BILL NO. 551

2 INTRODUCED BY Kenneth Stewart

3 BY REQUEST OF
4 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PUBLIC
7 INTEREST CRITERION FOR THE ISSUANCE OF WATER RIGHT PERMITS;
8 AMENDING SECTION 85-2-311, MCA; PROVIDING RETROACTIVE
9 APPLICATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 85-2-311, MCA, is amended to read:
13 "85-2-311. Criteria for issuance of permit. The
14 department shall issue a permit if:

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

 - 17 (a) at times when the water can be put to the use
 - 18 proposed by the applicant;
 - 19 (b) in the amount the applicant seeks to appropriate;
 - 20 and
 - 21 (c) throughout the period during which the applicant
 - 22 seeks to appropriate, the amount requested is available;

- 23 (2) the rights of a prior appropriator will not be
- 24 adversely affected;
- 25 (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 ~~(6) (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 ~~(i) the benefits to the applicant and the state;~~
- 15 ~~(ii) the economic feasibility of the project;~~
- 16 ~~(iii) the effects on the quality and potability of~~
17 ~~water of existing beneficial uses in the source of supply;~~
- 18 ~~and~~
- 19 ~~(iv) the effects on private property rights by the~~
20 ~~creation of or contribution to saline seep.~~

21 ~~(b) The department may deny the application under this~~
22 ~~subsection (6) only if it finds by clear and convincing~~
23 ~~evidence that the public interests served by denial clearly~~
24 ~~outweigh the benefits that the permit if issued would confer~~
25 ~~upon the applicant; and~~

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HB 551

LC 0426/01

1 ~~(b)(7)~~ 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, 19 81, 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."

Handwritten signature of Daniel M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-5-81

Approved by the Select Committee on Water

1 HOUSE BILL NO. 551
 2 INTRODUCED BY KEMMIS, STIMATZ
 3 BY REQUEST OF
 4 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A--PUBLIC
 7 INTEREST AN ADDITIONAL CRITERION FOR THE ISSUANCE OF WATER
 8 RIGHT PERMITS; AMENDING SECTION 85-2-311, MCA; PROVIDING
 9 RETROACTIVE APPLICATION; AND PROVIDING AN IMMEDIATE
 10 EFFECTIVE DATE."

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

1 (3) the proposed means of diversion or construction
 2 are adequate;
 3 (4) the proposed use of water is a beneficial use;
 4 (5) the proposed use will not interfere unreasonably
 5 with other planned uses or developments for which a permit
 6 has been issued or for which water has been reserved;
 7 (6) (a) in the case of an application involving the
 8 use of 3,000 or more acre-feet of water per year AND 5 or
 9 more cubic feet per second of water, or 50% of the median
 10 monthly flow in the source of supply for each month for
 11 which a permit to divert water is requested, the proposed
 12 use of water is in the public interest. In determining if
 13 the proposed use is in the public interest the department
 14 shall consider AND PROVIDE EVIDENCE ON:
 15 (i) the benefits to the applicant and the state;
 16 (ii) the economic feasibility of the project;
 17 (iii)(I) the effects on the quality and potability of
 18 water of existing beneficial uses in the source of supply;
 19 and
 20 (iv)(II) the effects on private property rights by the
 21 creation of or contribution to saline seep.
 22 (b) The department may deny the application SHALL
 23 ISSUE THE PERMIT under this subsection (6) only if it UNLESS
 24 THE DEPARTMENT finds by clear and convincing evidence that
 25 the public interests served BENEFITS OF EXISTING WATER USES

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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
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