

SENATE BILL NO. 199

INTRODUCED BY ETCHART, HAMMOND

IN THE SENATE

January 20, 1981	Introduced and referred to Committee on Agriculture, Livestock, and Irrigation.
January 30, 1981	Fiscal note requested.
February 4, 1981	Fiscal note returned.
February 9, 1981	Committee recommend bill do pass as amended. Report adopted.
February 10, 1981	Bill printed and placed on members' desks.
February 11, 1981	Second reading, do pass.
February 12, 1981	Correctly engrossed.
February 13, 1981	Third reading, passed. Ayes, 49; Noes, 1. Transmitted to House.

IN THE HOUSE

February 14, 1981	Introduced and referred to Committee on Natural Resources.
April 14, 1981	Committee recommend bill be concurred in. Report adopted.
April 17, 1981	Second reading, concurred in. On motion rules suspended and bill placed on third reading this day. Third reading, concurred in. Ayes, 75; Noes, 21.

IN THE SENATE

April 21, 1981

Returned from House. Con-
curred in. Sent to enrolling.

Reported correctly enrolled.

1 *Agust* BILL NO. *199*
 2 INTRODUCED BY *Robert Hammond*

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE DEPARTMENT
 5 OF NATURAL RESOURCES AND CONSERVATION TO SUSPEND ACTION ON
 6 APPLICATIONS AND TO CLOSE A SOURCE WITHIN THE MILK RIVER
 7 BASIN TO APPLICATIONS FOR A PERMIT TO APPROPRIATE WATER IN
 8 THE BASIN UNDER CERTAIN CONDITIONS."

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

11 Section 1. Milk River Basin -- suspension of action on
 12 permits -- proposal. (1) In order to balance the need for
 13 the continued development of Montana's water and for
 14 protection of existing rights in the Milk River Basin, the
 15 department may suspend action on a class of applications or
 16 may close a source in the basin and refuse to accept a class
 17 of applications, or both, for a permit under this part to
 18 appropriate from that source in the basin.

19 (2) Suspension or closure, or both, may only be
 20 proposed by the department.

21 (3) The proposal must state the source in the basin
 22 and class of applications for which suspension or closure,
 23 or both, is being proposed and any of the following
 24 allegations:

25 (a) that the frequency of occurrence of unappropriated

1 waters is such that:

2 (i) any new appropriation from the source for the
 3 class of applications will adversely affect the rights of a
 4 prior appropriation from the source; or

5 (ii) any new appropriation from the source for the
 6 class of applications will interfere unreasonably with
 7 another planned use or development for which a permit has
 8 been given or for which water has been reserved in the
 9 source; or

10 (b) that significant disputes or enforcement problems
 11 regarding priority of rights or amounts or duration of water
 12 in use by appropriators are in progress or will arise.

13 Section 2. Hearing -- order. (1) The department shall
 14 conduct a hearing on the proposed suspension or closure, or
 15 both. Notice of the hearing must be published at least once
 16 in each week for 3 successive weeks, not less than 30 days
 17 before the date of the hearing, in a newspaper of general
 18 circulation in the county or counties in which the source is
 19 located. The department shall serve by mail a copy of the
 20 notice and proposal not less than 30 days before the hearing
 21 upon each person or public agency known from the examination
 22 of the records of the department to be a claimant,
 23 appropriator, or permit holder of water in the source.

24 (2) The department may by order suspend action on and
 25 shall close the source and refuse to accept a class of

1 applications if the board finds on the basis of the hearing
 2 that there is substantial evidence in support of the
 3 allegations required by [section 1] to be contained in the
 4 petition.

5 (3) As part of fulfilling the requirements of 2-4-623,
 6 the order must define the source and must state the class of
 7 applications to which the suspension or closure, or both,
 8 applies.

9 (4) Upon adoption of the order, the department shall
 10 refuse to accept any application for a permit under this
 11 part for the class of application for which closure is
 12 ordered under [sections 1 and 2]. If the order suspends
 13 action on pending applications, the department shall notify
 14 the applicant that action on his application is suspended.

15 (5) Upon notice under 85-2-307 of intent to combine
 16 the hearings under 85-2-309 with the hearings under this
 17 section, the department may suspend action on pending
 18 applications of the class until the hearing is conducted
 19 under this section and, as part of its final order, may
 20 grant, deny, or condition the applications under 85-2-310
 21 and 85-2-311 or continue the suspension under this section.

22 Section 3. Request to modify suspension -- order. (1)
 23 A person or public agency may request that an order be
 24 modified or revoked. The request must contain allegations
 25 supported by substantial evidence showing that the criteria

1 in 85-2-311 can be met for an application or a class of
 2 applications from the source. If not so supported, the
 3 department may reject the request without a hearing.

4 (2) The department may by order after a hearing modify
 5 or revoke any order made as provided in [sections 1 and 2]
 6 upon such notice and in such manner as is reasonable under
 7 the circumstances.

8 Section 4. Codification instruction. Sections 1
 9 through 3 are intended to be codified as an integral part of
 10 Title 85, chapter 2, part 3, and the provisions of Title 85,
 11 chapter 2, apply to sections 1 through 3.

-End-

STATE OF MONTANA

REQUEST NO. 260-81

FISCAL NOTE

Form BD 15

In compliance with a written request received February 2, 1981, there is hereby submitted a Fiscal Note for Senate Bill 199 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:

Senate Bill 199 provides for the Department of Natural Resources to suspend action on applications and to close a basin or subbasin to certain specified or class of applications for Provisional Permit for water use. Such class of applications would be suspended or rejected only after notice, hearing, and, upon the finding of certain facts, a final order is adopted by the department.

Assumptions:

This fiscal note was prepared assuming that the "class of applications" for which an order would be adopted would be only for applications for permit having direct diversions from only the mainstem of the Milk River used for new or supplemental irrigation where no offstream storage is provided. Additional orders for suspension or closure of applications on the tributaries or other "classes" of applications may be necessary in the future and will require more extensive hydrological and environmental studies. These will require expenses beyond that assumed for fiscal years 82 and 83.

Fiscal Impact:

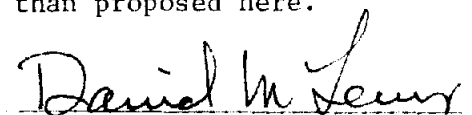
This will cause an increase of \$9,900 in fiscal year 1982 and \$2,400 in fiscal year 1983 because of increased operating expenses to carry out the purpose of the bill. It will not affect revenues.

Local Impact:

Additional fiscal impact could be realized by local city or county government, if they have water rights and would be involved in the hearing process. Assume the cost would be minimal and absorbed by present staff and budgets.

Long-Range Impact:

The long-range effect of this bill would lead to additional proposed closures on tributaries to the Milk River mainstem, requiring additional revenue to administer the law beyond FY 1983. If this bill works adequately in the Milk River basin, it could, through legislation, be expanded to apply to the entire state. The fiscal impact here is undetermined at this time, but would be substantially greater than proposed here.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-3-81

Approved by Committee
on Agriculture Livestock
& Irrigation

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 13 permits -- proposal. (1) In order to balance the need for
 14 the continued development of Montana's water and for
 15 protection of existing rights in the Milk River Basin, the
 16 department may suspend action on a class of applications or
 17 may close a source in the basin and refuse to accept a class
 18 of applications, or both, for a permit under this part to
 19 appropriate from that source in the basin.
 20 (2) Suspension or closure, or both, may only be
 21 proposed by the department.
 22 (3) The proposal must state the source in the basin
 23 and class of applications for which suspension or closure,
 24 or both, is being proposed and any of the following
 25 allegations:

1 (a) that the frequency of occurrence of unappropriated
 2 waters is such that:
 3 (i) any new appropriation from the source for the
 4 class of applications will adversely affect the rights of a
 5 prior appropriation from the source; or
 6 (ii) any new appropriation from the source for the
 7 class of applications will interfere unreasonably with
 8 another planned use or development for which a permit has
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 15 conduct a hearing on the proposed suspension or closure, or
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 18 before the date of the hearing, in a newspaper of general
 19 circulation in the county or counties in which the source is
 20 located. The department shall serve by mail a copy of the
 21 notice and proposal not less than 30 days before the hearing
 22 upon each person or public agency known from the examination
 23 of the records of the department to be a claimant,
 24 appropriator, or permit holder of water in the source.
 25 (2) The department may by order suspend action on and

1 shall close the source and refuse to accept a class of
 2 applications if the board II finds on the basis of the
 3 hearing that there is substantial evidence in support of the
 4 allegations required by [section 1] to be contained in the
 5 petition PROPOSAL.

6 (3) As part of fulfilling the requirements of 2-4-623,
 7 the order must define the source and must state the class of
 8 applications to which the suspension or closure, or both,
 9 applies.

10 (4) Upon adoption of the order, the department shall
 11 refuse to accept any application for a permit under this
 12 part for the class of application for which closure is
 13 ordered under ~~[sections 1 and 2]~~ THIS SECTION AND [SECTION
 14 1]. If the order suspends action on pending applications,
 15 the department shall notify the applicant that action on his
 16 application is suspended.

17 (5) Upon notice under 85-2-307 of intent to combine
 18 the hearings under 85-2-309 with the hearings under this
 19 section, the department may suspend action on pending
 20 applications of the class until the hearing is conducted
 21 under this section and, as part of its final order, may
 22 grant, deny, or condition the applications under
 23 85-2-306(2), 85-2-310, and 85-2-311 or continue the
 24 suspension under this section.

25 Section 3. Request to modify suspension -- order. (1)

1 A person or public agency may request that an order be
 2 modified or revoked. The request must contain allegations
 3 supported by substantial evidence showing that the criteria
 4 in 85-2-311 can be met for an application or a class of
 5 applications from the source. If not so supported, the
 6 department may reject the request without a hearing.

7 (2) The department may by order after a hearing modify
 8 or revoke any order made as provided in [sections 1 and 2]
 9 upon such notice and in such manner as is reasonable under
 10 the circumstances.

11 Section 4. Codification instruction. Sections 1
 12 through 3 are intended to be codified as an integral part of
 13 Title 85, chapter 2, part 3, and the provisions of Title 85,
 14 chapter 2, apply to sections 1 through 3.

15 SECTION 5. EFFECTIVE DATE. THIS ACT IS EFFECTIVE UPON
 16 PASSAGE AND APPROVAL.

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