

Senate Bill 474

In The Senate

February 13, 1981	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
	Fiscal note requested.
February 17, 1981	Fiscal note returned.
April 23, 1981	Died in Committee.

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INTRODUCED BY *Sen. [Signature]* *Sen. [Signature]* *Sen. [Signature]* BILLS NO. 474

A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPOSE AN ANNUAL FEE ON APPROPRIATIONS OF WATER MADE AFTER JULY 1, 1981; EXEMPTING DOMESTIC AND AGRICULTURAL USES; AND TO CREATE A WATER DEVELOPMENT PROGRAM TO BE FUNDED BY THE ANNUAL FEE; AMENDING SECTION 85-1-102, MCA."

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

**NEW SECTION.** Section 1. Annual permit fee -- exception. (1) (a) An annual fee of \$2 per acre foot is imposed on the holder of a permit issued after July 1, 1981, pursuant to 85-2-312 or 85-2-313. The fee is due each January 1 and must be paid to the department by March 31 of the year due or the permit shall be revoked. The fee shall be calculated on the appropriation allowed by the permit and not on the actual appropriation.

(b) The fee imposed by subsection (1)(a) does not apply to permits issued for agricultural or domestic uses.

(2) The fees collected pursuant to subsection (1)(a) shall be used by the department to make loans and grants for either state-owned or privately owned water development projects under [sections 3 through 10].

Section 2. Section 85-1-102, MCA, is amended to read:

"85-1-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(2) "Cost of works" means the cost of construction; the cost of all lands, property, rights, easements, and franchises acquired which are deemed necessary for the construction; the cost of all water rights acquired or exercised by the department in connection with those works; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding 3 years after the completion of construction; cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project; administrative expense; and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts,

1 incorporated companies, societies, or associations having  
2 any title or interest in any properties, rights, easements,  
3 or franchises to be acquired.

4 (5) "Project" means any one of the works herein  
5 defined or any combination of such works which are  
6 physically connected or jointly managed and operated as a  
7 single unit.

8 (6) "Works" means all property, rights, easements, and  
9 franchises relating thereto and deemed necessary or  
10 convenient for their operation and all water rights acquired  
11 or exercised by the department in connection with those  
12 works and includes all means of conserving and distributing  
13 water, including, without limiting the generality of the  
14 foregoing, reservoirs, dams, diversion canals, distributing  
15 canals, waste canals, drainage canals, dikes, lateral  
16 ditches and pumping units, mains, pipelines, and waterworks  
17 systems and includes all such works for the conservation,  
18 development, storage, distribution, and utilization of  
19 water, including without limiting the generality of the  
20 foregoing, works for the purpose of irrigation, flood  
21 prevention, drainage, fish and wildlife, recreation,  
22 development of power, watering of stock, supplying of water  
23 for public, domestic, industrial, or other uses and for fire  
24 protection.

25 (7) "Water development project" means a project or

1 activity for the conservation, management, use, development,  
2 or protection of the water and related agricultural, lands,  
3 fish, wildlife, and water recreation in the state and  
4 includes the development plans for and the rehabilitation,  
5 expansion, and modification of water development projects."

6 NEW SECTION. Section 3. Purpose and policies. (1) The  
7 legislature finds and declares that in order that the people  
8 of Montana may enjoy the full economic and recreational  
9 benefits of the state's water resources, the state must  
10 establish this long-term water development program providing  
11 financial assistance to private, local, and state entities  
12 for water resource development projects and activities.

13 (2) The purpose of the water development program is to  
14 further the state's policies, set forth in 85-1-101,  
15 regarding the conservation, development, and beneficial use  
16 of water resources.

17 (3) The legislature recognizes that water is one of  
18 the most valuable and important renewable resources in  
19 Montana; therefore, it is appropriate that the fee collected  
20 on the appropriation of water under [section 1] be used for  
21 the conservation, development, and beneficial use of water  
22 resources.

23 (4) The development of water resources is of a high  
24 priority because a large portion of Montana's present and  
25 future economy is based either directly or in rectly on the

1 wise use of water.

2 NEW SECTION. Section 4. Objectives. The department  
3 shall administer a water development program to accomplish  
4 such objectives as rehabilitation of state-owned water  
5 projects and works; promotion of private, local government,  
6 and state water development; development of water-based  
7 recreation and the protection of water resources for the  
8 benefit of agriculture, flood control, and other uses;  
9 development of offstream and tributary storage; and  
10 development of state-tribal, state-federal, and  
11 state-tribal-federal water projects. The water development  
12 program is the key implementation portion of the state water  
13 plan and shall be administered to accomplish the objectives  
14 of the plan.

15 NEW SECTION. Section 5. Applications for grants and  
16 loans to private persons. (1) A private person may apply for  
17 a grant or loan to finance a water development project or  
18 activity to be constructed, developed, and operated in  
19 Montana.

20 (2) An application for a loan or grant must be in the  
21 form prescribed by the board and contain or be accompanied  
22 by any information necessary to adequately describe the  
23 proposed project or activity and necessary for evaluation of  
24 the proposed project or activity under the criteria set out  
25 in [sections 6 and 7].

1 NEW SECTION. Section 6. Eligibility for a loan or  
2 grant to a private person. The department may not award a  
3 grant or loan to a private person unless the department  
4 finds, based on the application and the department's  
5 investigation and evaluation of the proposal, that:

6 (1) the proposed water development project or  
7 activity:

8 (a) will promote, enhance, or advance the purpose,  
9 policies, and objectives of the water development program;

10 (b) will be constructed, developed, and operated  
11 within the state of Montana;

12 (c) will be economically feasible. (A project or  
13 activity is economically feasible if the project benefits  
14 exceed the project costs. The department shall consider both  
15 tangible and intangible benefits and costs in calculating  
16 economic feasibility.)

17 (d) will be an efficient use of natural resources  
18 including water, energy, land, and air. (An efficient use is  
19 one that minimizes waste.)

20 (e) will provide multipurpose facilities to the extent  
21 practicable;

22 (f) will comply with statutory and regulatory  
23 standards protecting the quality of resources such as air,  
24 water, land, fish, wildlife, and recreational opportunities;

25 (g) will provide associated public benefits in

1 addition to any private benefits the project or activity may  
2 provide; and

3 (h) is needed to accomplish the purpose for which the  
4 water development project or activity is proposed;

5 (2) the applicant has adequate financial resources to  
6 construct, operate, and maintain the water development  
7 project or activity. The department shall consider financial  
8 resources from any source for which the applicant has  
9 qualified, including a water development grant or loan.

10 (3) the applicant holds or can acquire all necessary  
11 lands, other than public lands, and interests therein and  
12 water rights necessary for the construction, operation, and  
13 maintenance of the proposed water development project or  
14 activity;

15 (4) if the application is for a loan, the applicant is  
16 credit-worthy and able and willing to enter into a contract  
17 with the department for loan repayment and construction or  
18 development of the proposed water development project or  
19 activity; and

20 (5) if the application is for a grant, the applicant  
21 is able and willing to enter into a contract with the  
22 department for construction or development of the proposed  
23 water development project or activity.

24 NEW SECTION. Section 7. Evaluation of grants and  
25 loans to private persons. The department shall consider the

1 following criteria and preferences in evaluating  
2 applications and selecting the recipients of grants and  
3 loans for water development projects and activities that are  
4 eligible for funding under [section 6]:

5 (1) The extent and desirability of the public benefits  
6 that will be provided must be considered.

7 (2) A water development project or activity that will  
8 be used as part of a family farm or in starting a new  
9 business shall be given preference. A family farm is one  
10 devoted primarily to agriculture under the ownership of a  
11 resident Montana family.

12 (3) A water development project or activity that will  
13 utilize or develop water reserved under 85-2-316 shall be  
14 given preference.

15 (4) The department, to the extent practicable, shall  
16 attempt to achieve geographic balance in the promotion of  
17 water development projects and activities through the  
18 awarding of loans and grants to private persons.

19 (5) The extent to which the water development project  
20 or activity will fully utilize water resources and promote  
21 the conservation and efficient use of the water resource  
22 shall be evaluated and considered.

23 (6) Projects or activities that could not be  
24 accomplished without the assistance of a loan or grant shall  
25 be given preference.

1 (7) The department shall give due consideration to any  
2 other factor that, in the department's judgment, is  
3 important to the evaluation of the water development project  
4 or activity in light of the purposes, policies, and  
5 objectives of the water development program.

6 NEW SECTION. Section 8. Rulemaking authority. The  
7 board shall adopt rules:

8 (1) prescribing the form and content of applications  
9 for grants and loans;

10 (2) governing the application of the criteria for  
11 awarding loans and grants to private persons;

12 (3) providing for the servicing of loans including  
13 arrangements for obtaining security interests and the  
14 establishment of reasonable fees or charges to be made; and

15 (4) describing the terms and conditions for making  
16 grants and loans, the security instruments, and the  
17 agreements necessary.

18 NEW SECTION. Section 9. Security interests. The state  
19 has a lien upon a project constructed with money from the  
20 water development earmarked or clearance account for the  
21 amount of the loan and interest due the state. This lien may  
22 attach to any project facilities, equipment, easements, real  
23 property, and property of any kind or nature owned by the  
24 debtor, including all water rights. The department shall  
25 file with the county clerk and recorder of each county in

1 which a part of the project is located either a financing  
2 statement or a real estate mortgage covering the loan, its  
3 amount, terms, and a description of the security. The  
4 county clerk and recorder shall record and index the lien as  
5 other liens are required by law to be recorded and indexed.  
6 The lien shall be valid until paid in full or otherwise  
7 discharged. The lien shall be foreclosed in accordance with  
8 applicable state law governing foreclosure of mortgages and  
9 liens.

10 NEW SECTION. Section 10. Administration of loans and  
11 grants. The department shall:

12 (1) administer the loan and grant program established  
13 by [sections 3 through 10];

14 (2) service loans made or contract and pay for the  
15 servicing of loans, including arrangements for obtaining  
16 security interests; and

17 (3) collect reasonable fees or charges for the  
18 servicing of loans, including arrangements for obtaining  
19 security interests.

20 Section 11. Codification instruction. (1) Section 1 is  
21 intended to be codified as an integral part of Title 85,  
22 chapter 2, part 3, and the provisions of Title 85, chapter  
23 2, apply to section 1.

24 (2) Sections 4 through 10 are intended to be codified  
25 as an integral part of Title 85, chapter 1, and the

SB 474

LC 2267/01

1 provisions of Title 85, chapter 1, apply to sections 4  
2 through 10.

-End-

STATE OF MONTANA

REQUEST NO. 379.81

FISCAL NOTE

Form BD-15

In compliance with a written request received February 13, 19 81, there is hereby submitted a Fiscal Note for Senate Bill 474 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 474 would impose a \$2 per acre foot annual fee on appropriations of water issued after July 1, 1981, exempting domestic and agricultural uses. It creates a water development loan and grant program to be funded from the fee.

ASSUMPTIONS:

1. It is assumed for purposes of this note that all pending applications, which are not exempt under this bill, will be approved during the 1982-83 biennium.
2. It is assumed that hydropower, industrial, municipal (other than domestic), mining, recreation, and fish and wildlife applications, including applications by governmental agencies would not be exempt.

FISCAL IMPACT:

Revenues:

Revenue from pending applications which would be issued during the 1982-83 biennium would exceed \$35,000,000, not including applications which may yet be received and approved.

Expenditures:

Administrative expenditures would be approximately \$80,000 each year of the biennium while the balance of the revenue would go toward the grant and loan program.

LOCAL IMPACT:

Revenue

County and local revenues could be increased through grants for water development projects.

Expenditures

County and local expenditures could be increased if they were granted non-domestic water reservations after July 1, 1981.

LONG-RANGE IMPACTS:

Annual revenues from permit fees would increase as additional permits were granted under this Act. (It is not possible to estimate these increases).

*David M. Lewis*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/17/81