

HOUSE BILL NO. 806

Introduced: 02/15/83

Referred to Committee on Natural Resources: 02/15/83

Hearing: 2/18/83

Died in Committee

1 *House* BILL NO. *806*  
2 INTRODUCED BY *Walton*  
3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING THE BOARD OF  
6 WATER WELL CONTRACTORS; TRANSFERRING WATER WELL REGULATORY  
7 AUTHORITY TO THE DEPARTMENT OF NATURAL RESOURCES AND  
8 CONSERVATION; CREATING A WATER WELL CONTRACTORS ADVISORY  
9 COUNCIL AND SPECIFYING ITS DUTIES AND COMPENSATION;  
10 PERMITTING THE DEPARTMENT TO REPAIR SUBSTANDARD WORK AT THE  
11 CONTRACTOR'S EXPENSE; REQUIRING DISCLOSURE FORMS TO BE  
12 FURNISHED BEFORE A CONTRACTOR SIGNS A CONTRACT TO CONSTRUCT  
13 A WELL; PROVIDING LICENSING RECIPROCITY; INCREASING THE SUM  
14 OF THE BOND REQUIRED FOR ISSUANCE OF A CONTRACTOR'S LICENSE;  
15 DEFINING "WATER WELL DRILLER" AND ESTABLISHING A DRILLER'S  
16 LICENSE; CLARIFYING THE DEPARTMENT'S DISCIPLINARY AUTHORITY;  
17 ESTABLISHING FEES COMMENSURATE WITH COSTS; AMENDING SECTIONS  
18 2-8-103, 37-43-102, 37-43-103, 37-43-202, 37-43-302 THROUGH  
19 37-43-307, 37-43-311, AND 37-43-312, MCA; REPEALING SECTIONS  
20 2-15-1862 AND 37-43-201, MCA; AND PROVIDING AN EFFECTIVE  
21 DATE."  
22  
23 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,  
24 MCA, terminates the Board of Water Well Contractors and  
25 requires a performance evaluation of the Board by the

1 Legislative Audit Committee; and  
2 WHEREAS, as a result of the performance evaluation, the  
3 Legislative Audit Committee recommends that the Board of  
4 Water Well Contractors be reestablished as the Water Well  
5 Contractors Advisory Council and that water well regulation  
6 be transferred to the Department of Natural Resources and  
7 Conservation.  
8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
10 NEW SECTION. Section 1. Abolishment of board --  
11 transfer of duties -- rules saved. (1) The board of water  
12 well contractors, created pursuant to 2-15-1862, is  
13 abolished.  
14 (2) The statutory authority to regulate water well  
15 contractors contained in Title 37, chapter 43, is  
16 transferred to the department of natural resources and  
17 conservation.  
18 (3) All orders and rules relating to water well  
19 contracting made by the board of water well contractors  
20 remain in effect until revoked or modified in accordance  
21 with law by the department of natural resources and  
22 conservation.  
23 Section 2. Section 2-8-103, MCA, is amended to read:  
24 "2-8-103. Agencies to terminate. (1) The following  
25 agencies shall terminate on July 1, 1979:

-2- INTRODUCED BILL

*HB 806*

1 (a) board of abstracters, department of professional  
2 and occupational licensing, created by 2-15-1643;

3 (b) board of real estate, department of professional  
4 and occupational licensing, created by 2-15-1642;

5 (c) state board of warm air heating, ventilation, and  
6 air conditioning, department of professional and  
7 occupational licensing, created by 2-15-1656;

8 (d) board of institutions, department of institutions,  
9 created by 2-15-2303.

10 (2) The following agencies shall terminate on July 1,  
11 1981:

12 (a) board of athletics, department of professional and  
13 occupational licensing, created by 2-15-1661;

14 (b) board of massage therapists, department of  
15 professional and occupational licensing, created by  
16 2-15-1627;

17 (c) board of osteopathic physicians, department of  
18 professional and occupational licensing, created by  
19 2-15-1607;

20 (d) board of podiatry examiners, department of  
21 professional and occupational licensing, created by  
22 2-15-1608<sup>1</sup>;

23 (3) The following units of state government shall  
24 terminate on July 1, 1983:

25 (a) board of aeronautics, department of commerce,

1 created by 2-15-1812;

2 (b) state board of hail insurance, department of  
3 agriculture, created by 2-15-3003;

4 (c) board of horseracing, department of commerce,  
5 created by 2-15-1881;

6 (d) board of livestock, department of livestock,  
7 created by 2-15-3102;

8 (e) board of milk control, department of commerce,  
9 created by 2-15-1802;

10 (f) board of oil and gas conservation, department of  
11 natural resources and conservation, created by 2-15-3303;

12 (g) Montana outfitters' council, department of fish,  
13 wildlife, and parks, created by 2-15-3403;

14 (h) public service commission, department of public  
15 service regulation, created by 69-1-102;

16 (i) board of water and wastewater operators,  
17 department of health and environmental sciences, created by  
18 2-15-2105<sup>1</sup>;

19 ~~(j) board of water well contractors, department of~~  
20 ~~commerce created by 2-15-1862;~~

21 (4) The following agencies terminate on July 1, 1985:

22 (a) the board of public accountants, department of  
23 commerce, created by 2-15-1866;

24 (b) the board of architects, department of commerce,  
25 created by 2-15-1871;

1 (c) state banking board, department of commerce,  
 2 created by 2-15-1803;  
 3 (d) the state electrical board, department of  
 4 commerce, created by 2-15-1874;  
 5 (e) the board of professional engineers and land  
 6 surveyors, department of commerce, created by 2-15-1873;  
 7 (f) office of commissioner of insurance and the  
 8 insurance department, state auditor's office, created by  
 9 2-15-1902 and 2-15-1903;  
 10 (g) office of the securities commissioner, state  
 11 auditor's office, created by 2-15-1901;  
 12 (h) the board of landscape architects, department of  
 13 commerce, created by 2-15-1872;  
 14 (i) the board of county printing, department of  
 15 commerce, created by 2-15-1811;  
 16 (j) the board of plumbers, department of commerce,  
 17 created by 2-15-1875;  
 18 (k) board of physical therapy examiners, department of  
 19 commerce, created by 2-15-1858.  
 20 (5) The following agencies terminate on July 1, 1987:  
 21 (a) commission for human rights, department of labor  
 22 and industry, created by 2-15-1706;  
 23 (b) Montana state board of medical examiners,  
 24 department of commerce, created by 2-15-1841;  
 25 (c) board of dentistry, department of commerce,

1 created by 2-15-1842;  
 2 (d) board of pharmacists, department of commerce,  
 3 created by 2-15-1843;  
 4 (e) board of nursing, department of commerce, created  
 5 by 2-15-1844;  
 6 (f) board of nursing home administrators, department  
 7 of commerce, created by 2-15-1845;  
 8 (g) board of optometrists, department of commerce,  
 9 created by 2-15-1846;  
 10 (h) board of chiropractors, department of commerce,  
 11 created by 2-15-1847;  
 12 (i) board of radiologic technologists, department of  
 13 commerce, created by 2-15-1848;  
 14 (j) board of speech pathologists and audiologists,  
 15 department of commerce, created by 2-15-1849;  
 16 (k) board of hearing aid dispensers, department of  
 17 commerce, created by 2-15-1850;  
 18 (l) board of psychologists, department of commerce,  
 19 created by 2-15-1851;  
 20 (m) board of veterinarians, department of commerce,  
 21 created by 2-15-1852;  
 22 (n) board of morticians, department of commerce,  
 23 created by 2-15-1853;  
 24 (o) board of barbers, department of commerce, created  
 25 by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

~~(s) The following agency terminates July 1, 1989: water well contractors advisory council, department of natural resources and conservation, created by [section 3]."~~

**NEW SECTION.** Section 3. Water well contractors advisory council. (1) There is a water well contractors advisory council.

(2) The council is composed of five members, consisting of:

(a) one technical adviser hydrogeologist appointed by the Montana bureau of mines and geology;

(b) two licensed Montana water well contractors appointed by the governor;

(c) one member appointed by the director of the department of health and environmental sciences; and

(d) one public member who is not a water well contractor, appointed by the governor.

(3) Each member of the council must have been a bona fide resident of this state for period of at least 3 years before appointment.

(4) Each member of the council shall serve a 3-year term. If a vacancy occurs on the council, an appointment must be made to fill the vacancy in the same manner as the original appointment.

(5) The council is allocated to the department of natural resources and conservation, which shall provide technical and administrative assistance to the council.

**NEW SECTION.** Section 4. Advisory council duties -- compensation -- expenses. (1) The advisory council shall make recommendations to the department and the director concerning:

(a) contractor and driller qualifications;

(b) rules of procedure and rules to implement this chapter, such as rules prescribing all requisite qualifications for licensure, including training and experience;

(c) hearings and proceedings to suspend or revoke licenses of contractors or drillers for due cause; and

(d) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the health, safety, and welfare of those persons using the services of contractors and drillers and for the protection of the general public.

(2) Members of the council are entitled to be reimbursed and compensated as are members of advisory councils in 2-15-122.

1 (3) The department shall pay the expenses of the  
2 council from fees deposited in the earmarked revenue fund  
3 pursuant to this chapter.

4 ~~NEW SECTION.~~ Section 5. Reciprocity. A person who is  
5 licensed as a contractor or driller in another state may  
6 receive reciprocity licensing in this state if he fulfills  
7 the requirements of this chapter and the rules adopted under  
8 it, other than those relating to examination. However, he  
9 may be licensed without examination only if the state in  
10 which he is licensed grants the same privilege to persons  
11 licensed in this state who seek licensure as contractors or  
12 drillers in that state.

13 ~~NEW SECTION.~~ Section 6. Substandard work -- cost. If  
14 the department finds that it is necessary to redrill or  
15 repair a well because of substandard work by a contractor or  
16 driller, the department may order the work to be done at the  
17 contractor's expense. Failure to comply with the  
18 department's order is grounds for suspension or revocation  
19 of the contractor's license.

20 ~~NEW SECTION.~~ Section 7. Disclosure forms. Before a  
21 contractor enters into a contract to construct a water well,  
22 he must furnish a disclosure form to the person for whom the  
23 services are to be performed. The form, as prescribed by the  
24 department, must contain but is not limited to the following  
25 information:

- 1 (1) starting and completion dates;
  - 2 (2) price for drilling, including time for moving and  
3 assembling equipment;
  - 4 (3) method and time of payment;
  - 5 (4) diameter and thickness of well casing;
  - 6 (5) procedure for developing the well and cost;
  - 7 (6) test discharge and drawdown procedure and cost;
  - 8 (7) price if any changes are made;
  - 9 (8) well record showing an accurate log of material  
10 encountered, starting waterline, drawdown discharge, and  
11 depth; and
  - 12 (9) provision for who is responsible for payment for a  
13 dry hole.
- 14 Section 8. Section 37-43-102, MCA, is amended to read:
- 15 "37-43-102. Definitions. Unless the context requires  
16 otherwise, in this chapter the following definitions apply:
- 17 (1) ~~"Board"--means-the-board-of-water-well--contractors~~  
18 ~~provided-for-in-2-15-1962~~ "Advisory Council" means the water  
19 well contractors advisory council provided for in section  
20 33.
- 21 (2) "Department" means the department of commerce  
22 natural resources and conservation provided for in Title 2,  
23 chapter 15, part 10 33.
- 24 (3) "Water well" means an excavation that is drilled,  
25 cored, bored, washed, driven, dug, jetted, or otherwise

1 constructed and intended for the location, diversion,  
2 artificial recharge, or acquisition of groundwater. The term  
3 does not include spring development or excavations, by  
4 backhoe or otherwise, for recovery and use of surface waters  
5 or for the purpose of stock watering or irrigation where the  
6 depth is 25 feet or less. The term does not include an  
7 excavation made for the purpose of obtaining or prospecting  
8 for oil, natural gas, minerals, or products of mining or  
9 quarrying or for inserting media to repressure oil- or  
10 natural-gas-bearing formations or for storing petroleum,  
11 natural gas, or other products.

12 (4) "Water well contractor" or "contractor" means a  
13 natural person who constructs a water well on lands other  
14 than his own for compensation.

15 ~~(5) "Water well driller" or "driller" means an~~  
16 ~~individual who performs labor or services for a licensed~~  
17 ~~water well contractor in connection with the drilling of a~~  
18 ~~water well at the direction and under the personal~~  
19 ~~supervision of a licensed water well contractor."~~

20 Section 9. Section 37-43-103, MCA, is amended to read:

21 "37-43-103. Exemptions. This chapter does not apply  
22 to:

23 ~~(1) an individual who drills a water well on land which~~  
24 ~~is owned or leased by him and is used by him for farming,~~  
25 ~~ranching, or agricultural purposes or as his place of abode~~

1 and who obtains a permit from the board, which permit the  
2 board shall issue upon finding that the drilling is exempted  
3 under this paragraph; or

4 ~~(2) an individual who performs labor or services for a~~  
5 ~~licensed water well contractor in connection with the~~  
6 ~~drilling of a water well at the direction and under the~~  
7 ~~personal supervision of a licensed water well contractor."~~

8 Section 10. Section 37-43-202, MCA, is amended to  
9 read:

10 "37-43-202. Powers and duties. (1) The board  
11 department may exercise the authority granted to it by this  
12 chapter.

13 (2) The board department shall adopt rules and orders  
14 to effectuate this chapter.

15 (3) The board may request the department to may  
16 inspect water wells drilled or being drilled, and the  
17 department has access to these at reasonable times.

18 (4) The board department may subject to 37-1-101 and  
19 37-1-121, establish a program for training water well  
20 drillers or prospective water well drillers and apprentices  
21 to more effectively carry out this chapter.

22 (5) The rules of the board department shall be  
23 compiled in printed form for distribution to interested  
24 persons, for which the department may charge a fee. Sums  
25 realized from these sales shall be deposited in the

earmarked revenue fund for the use of the board department,  
subject to 37-1-101(6).

(6) The board department shall:

(a) authorize the department to issue licenses to  
qualified water well contractors in this state;

(b) cause examinations to be made of applicants for  
licenses;

(c) revoke or suspend licenses for good cause, after  
notice and opportunity to be heard;

(d) reinstate licenses previously revoked when  
justification is shown to the satisfaction of the board  
department; and

(e) generally perform duties which will carry out this  
chapter; and

(f) establish fees commensurate with costs pursuant to  
37-1-134."

Section 11. Section 37-43-302, MCA, is amended to  
read:

"37-43-302. License Licenses required. (1) The  
drilling, making, or construction of water wells into the  
groundwater resources of this state is declared to be a  
business and activity affecting the public interest,  
requiring reasonable standards of competence. It is unlawful  
for any contractor, as defined in this chapter, to construct  
a water well without first having obtained a valid license

therefor as provided for in this chapter.

(2) No person may perform labor or services for a  
licensed water well contractor in connection with the  
drilling of a water well unless he is licensed as a driller  
as provided in this chapter."

Section 12. Section 37-43-303, MCA, is amended to  
read:

"37-43-303. Application -- fee. (1) A person desiring  
to engage in the drilling, making, or construction of one or  
more wells for underground water in this state shall first  
file an application with the department for a contractor's  
or driller's license, setting out his qualifications, the  
equipment proposed to be used in the contracting, and other  
matters required by the board department on forms adopted by  
the board department.

(2) The department shall charge a fee of \$100 for  
filing the application of a person. The application shall  
not be acted on until the fee has been paid. Fees collected  
under this section shall be deposited in the earmarked  
revenue fund for the use of the board department, subject to  
37-1-101(6).

(3) A license to construct water wells shall be issued  
to an applicant if, in the opinion of the board department,  
the applicant is qualified to conduct water well  
construction operations. In the granting of licenses, the

1 board department shall have due regard for the interest of  
2 this state in the protection of its underground waters."

3 Section 13. Section 37-43-304, MCA, is amended to  
4 read:

5 "37-43-304. Temporary license pending examination. A  
6 temporary water well contractor's license may be issued to a  
7 person who, by evidence satisfactory to the board  
8 department, is found to possess the qualifications numbered  
9 (a) through (f) in 37-43-305(1) and who has applied for a  
10 license under this chapter. The temporary license entitles  
11 the holder to engage in the business of drilling, making, or  
12 constructing water wells until the time of the next  
13 examination given under 37-43-305. On the applicant's  
14 successfully meeting the board's department's requirements  
15 on examination, the temporary license shall be returned to  
16 the department and a regular license issued. If the holder  
17 of a temporary license fails, after notice of the holding of  
18 an examination, to submit himself for examination or to meet  
19 the board's department's requirements, the temporary license  
20 expires and shall be returned to the department for  
21 cancellation."

22 Section 14. Section 37-43-305, MCA, is amended to  
23 read:

24 "37-43-305. Examination and qualifications. (1) Under  
25 rules pertaining to the business of drilling and contracting

1 for drilling of water wells which the board department  
2 adopts, the department shall ~~subject to 37-43-304~~  
3 inquire by examination or otherwise into the qualifications  
4 of applicants for licenses to drill or make wells for the  
5 production of underground waters in this state.  
6 Examinations may be oral, written, or both. The  
7 qualifications ~~for contractors~~ required by the board  
8 department are:

9 (a) familiar knowledge of groundwater laws of this  
10 state and sanitary standards for water well drilling and  
11 construction of water wells;

12 (b) knowledge of types of water well construction;

13 (c) knowledge of types of drilling tools and their  
14 uses;

15 (d) knowledge of underground geology in its relation  
16 to well construction;

17 (e) possession of adequate equipment by the applicant  
18 to complete satisfactory water wells under the standards of  
19 the board department;

20 (f) financial responsibility of the applicant;

21 (g) successful completion of an examination given by  
22 the department; and

23 (h) the applicant must have completed a minimum of 1  
24 year apprenticeship under the direct supervision of a  
25 licensed water well contractor.

(2) ~~The department shall by rule establish qualifications and administer examinations for drillers. The qualifications must be sufficient to protect the public interest as defined in this chapter and must require a general knowledge of water well construction and sanitation standards and proper use of drilling equipment.~~

~~(2)(3) The department shall give examinations at times and places the board it determines. Failure of an applicant to successfully complete the examination disqualifies him from making further application for a period of 6 months.~~

The board department shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board department does not entitle the applicant to a refund of the fee."

Section 15. Section 37-43-306, MCA, is amended to read:

"37-43-306. Bond to be required. The department, on issuance of a license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or in lieu thereof its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board department, in the penal sum of ~~\$1,000~~ \$10,000, conditioned that the licensee will comply with the rules of the board department

and reasonable requirements made by the board department in connection with the drilling of an individual well."

Section 16. Section 37-43-307, MCA, is amended to read:

"37-43-307. Annual renewal -- fee -- revocation for nonrenewal. (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee of ~~\$25~~ as established by the department pursuant to 37-43-202.

(2) If a licensee does not apply for renewal of his license before the first day of a license year and remit to the department the renewal fee, he shall have his license suspended by the board department. If the license remains suspended for a period of more than 30 days after the first day of a license year, it shall be revoked by the board department. However, the department, prior to this revocation, shall notify the licensee of ~~the board's~~ its intention to revoke at least 10 days prior to the time set for action to be taken by the board department on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating

to the ~~board department~~ that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through his own fault desires to engage in the business of water well drilling in this state or contracting therefor, he must apply under 37-43-303 and 37-43-304. Notice of suspension shall be given a licensee when the suspension occurs."

Section 17. Section 37-43-311, MCA, is amended to read:

"37-43-311. Suspension and revocation of license -- grounds -- procedure. (1) A license issued under this chapter may be suspended or revoked by the ~~board department~~ in cases other than failure of a licensee to renew the license after notice and hearing:

(a) in the event the licensee has violated a condition of the bond maintained by him as a prerequisite to issuance of the license;

(b) for the practice of fraud or deceit in obtaining a license;

(c) for gross negligence;

(d) for incompetence;

(e) for conviction of a felony; or

(f) for violating the requirements of this chapter.

(2) Any person may make complaint against a licensee. Complaints shall be in writing, signed by the complainant,

and must specify the charges against the licensee. The ~~board department~~ on its own motion or on receipt of a complaint shall hold a hearing on charges.

(3) ~~A person bringing the complaint has the burden of proof and must appear in person. A unanimous vote of the board is required in order to revoke or suspend a licensee. If a suspension is directed by the board, it may not be for a period in excess of 1 year. The department shall exercise the disciplinary authority set forth in 37-1-136.~~"

Section 18. Section 37-43-312, MCA, is amended to read:

"37-43-312. Penalty. Any person who shall willfully violate any lawful rule or order of the ~~board department~~ or who shall engage in the business of drilling or making water wells without first having obtained a license as in this chapter required or who shall violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than \$500 or imprisonment in a county jail for a term not exceeding 6 months, or both. Any violation of this chapter shall be prosecuted by the county attorney in the county in which the violation occurred or is occurring, and the trial thereof shall be held in that county."

NEW SECTION. Section 19. Repealer. Sections 2-15-1862 and 37-43-201, MCA, are repealed.

1        NEW SECTION. Section 20. Codification instruction.  
2        (1) Section 3 is intended to be codified as an integral part  
3        of Title 2, chapter 15, part 33, and the provisions of Title  
4        2, chapter 15, part 33, apply to section 3.

5        (2) Sections 4 through 7 are intended to be codified  
6        as an integral part of Title 37, chapter 43, and the  
7        provisions of Title 37, chapter 43, apply to sections 4  
8        through 7.

9        NEW SECTION. Section 21. Effective date --  
10       nonapplicability of windup provision. (1) This act is  
11       effective July 1, 1983.

12       (2) The provisions of 2-8-121 do not apply to the  
13       board of water well contractors.

-End-

STATE OF MONTANA

REQUEST NO. 479-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 18, 19 83, there is hereby submitted a Fiscal Note for House Bill 806 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

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 806 abolishes the Board of Water Well Contractors under the Department of Commerce, which has the regulatory authority over the water well drilling industry in the state of Montana and transfers the board's regulatory authority to the Department of Natural Resources and Conservation. This bill also includes recommendations made by the legislative audit committee as a result of the sunset audit conducted on the board.

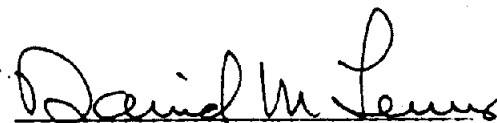
ASSUMPTIONS:

- 1) One additional Grade 12, F.T.E.
- 2) One additional Grade 8, F.T.E.
- 3) 30 days traveled per year covering 5,000 miles by the Grade 12.
- 4) 5,000 miles traveled per year by 9 field offices conducting field investigation complaints.
- 5) Office equipment for 2 F.T.E.'s (desks, chairs, filing cabinet, typewriter, etc., calculator and miscellaneous items).
- 6) Other expenses (supplies and materials - printing of tests, licenses, informational brochures, etc., room rental for workshops, and office supplies.)
- 7) 20 license applications and 250 license renewals per year.

FISCAL IMPACT:

This bill would require \$80,846, over the biennium from the board's earmarked revenue fund account; \$8,250 is the total expected to be received annually on fees from license exams and renewal fees. Therefore, either fees must be increased or funds from another source must be appropriated.

FISCAL NOTE 15: V/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-21-83