

HOUSE BILL NO. 396

INTRODUCED BY SPEATH, RAMIREZ, HOLLIDAY, HANSON, BOYLAN

BY REQUEST OF THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION

IN THE HOUSE

January 23, 1985	Introduced and referred to Committee on Natural Resources.
January 24, 1985	Fiscal Note requested.
January 30, 1985	Fiscal Note returned.
February 23, 1985	Committee recommend bill do pass. Report adopted. Statement of Intent attached.
February 25, 1985	Bill printed and placed on members' desks.
February 26, 1985	Second reading, do pass. Considered correctly engrossed.
February 27, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 5, 1985	Introduced and referred to Committee on Natural Resources.
March 25, 1985	Committee recommend bill be concurrred in. Report adopted.
March 27, 1985	Second reading, concurrred in.

March 29, 1985

Third reading, concurred in.
Ayes, 49; Noes, 0.

Returned to House.

IN THE HOUSE

March 29, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

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4 OF NATURAL RESOURCES AND CONSERVATION

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6 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE
7 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S AUTHORITY
8 TO DETERMINE THAT AN APPLICATION FOR A BENEFICIAL WATER USE
9 PERMIT IS NOT IN GOOD FAITH OR DOES NOT SHOW A BONA FIDE
10 INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; AMENDING
11 SECTION 85-2-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
12 DATE AND AN APPLICABILITY DATE."
13

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

15 Section 1. Section 85-2-310, MCA, is amended to read:

16 "85-2-310. Action on application. (1) The department
17 shall grant, deny, or condition an application for a permit
18 in whole or in part within 120 days after the last date of
19 publication of the notice of application if no objections
20 have been received and within 180 days if a hearing is held
21 or objections have been received. However, in either case
22 the time may be extended upon agreement of the applicant,
23 or, in those cases where an environmental impact statement
24 must be prepared or in other extraordinary cases, not more
25 than 60 days upon order of the department. If the

1 department orders the time extended, it shall serve a notice
2 of the extension and the reasons therefor by certified mail
3 upon the applicant and each person who has filed an
4 objection as provided by 85-2-308.

5 (2) However, an application may not be approved in a
6 modified form or upon terms, conditions, or limitations
7 specified by the department or denied, unless the applicant
8 is first granted an opportunity to be heard. If no objection
9 is filed against the application but the department is of
10 the opinion that the application should be approved in a
11 modified form or upon terms, conditions, or limitations
12 specified by it or that the application should be denied,
13 the department shall prepare a statement of its opinion and
14 the reasons therefor. The department shall serve a statement
15 of its opinion by certified mail upon the applicant,
16 together with a notice that the applicant may obtain a
17 hearing by filing a request therefor within 30 days after
18 the notice is mailed. The notice shall further state that
19 the application will be modified in a specified manner or
20 denied, unless a hearing is requested.

21 (3) The department may cease action upon an
22 application for a permit and return it to the applicant when
23 it finds that the application is not in good faith or does
24 not show a bona fide intent to appropriate water for a
25 beneficial use. An application returned for any of these

1 reasons shall be accompanied by a statement of the reasons
 2 for which it was returned, and there shall be no right to a
 3 priority date based upon the filing of the application.
 4 Returning an application pursuant to this subsection shall
 5 be deemed a final decision of the department.

6 (4) For all applications filed after July 1, 1973, the
 7 department shall find that an application is not in good
 8 faith or does not show a bona fide intent to appropriate
 9 water for a beneficial use if:

10 (a) an application is not corrected and completed as
 11 required by 85-2-302;

12 (b) the appropriate filing fee is not paid;

13 (c) the application does not document:

14 (i) a beneficial use of water;

15 (ii) the proposed place of use of all water applied
 16 for;

17 (iii) for an appropriation of 4,000 acre-feet a year or
 18 more and 5.5 cubic feet per second or more, a detailed
 19 project plan including, but not limited to, a reasonable
 20 time line for the completion of the project and the actual
 21 application of the water to a beneficial use, which may not
 22 exceed 10 years from the date of application, detailing when
 23 and how much water will be put to a beneficial use;

24 (iv) for appropriations not covered in subsection
 25 (4)(c)(iii), a general project plan stating when and how

1 much water will be put to a beneficial use; and

2 (v) if the water applied for is to be appropriated
 3 above that which will be used solely by the applicant or if
 4 it will be marketed by the applicant to other users,
 5 information detailing:

6 (A) each person who will use the water and the amount
 7 of water each person will use;

8 (B) the proposed place of use of all water by each
 9 person;

10 (C) the nature of the relationship between the
 11 applicant and each person using the water; and

12 (D) each firm contractual agreement for the specified
 13 amount of water for each person using the water; or

14 (d) the appropriate environmental impact statement
 15 fee, if any, is not paid as required by 85-2-124."

16 NEW SECTION. Section 2. Extension of authority. Any
 17 existing authority of the department of natural resources
 18 and conservation to make rules on the subject of the
 19 provisions of this act is extended to the provisions of this
 20 act.

21 NEW SECTION. Section 3. Applicability. This act
 22 applies retroactively, within the meaning of 1-2-109, to all
 23 applications filed after July 1, 1973.

24 NEW SECTION. Section 4. Severability. If a part of
 25 this act is invalid, all valid parts that are severable from

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1 the invalid part remain in effect. If a part of this act is
2 invalid in one or more of its applications, the part remains
3 in effect in all valid applications that are severable from
4 the invalid applications.

5 NEW SECTION. Section 5. Effective date. This act is
6 effective on passage and approval.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN216-85

Form BD-15

In compliance with a written request received January 24 19 85, there is hereby submitted a Fiscal Note for H.B. 396 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.

BRIEF DESCRIPTION:

House Bill 396 proposes to clarify the Department of Natural Resources and Conservation's authority to determine that an Application for Beneficial Water Use Permit is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. It is the intent of this Bill to apply the changes to all permit applications filed after July 1, 1973, for which no permit has been issued.

ASSUMPTIONS:

1. Existing staff will assume any increased work load.
2. Existing forms will require modification.
3. Department staff will attend the three hearings.

FISCAL IMPACT:

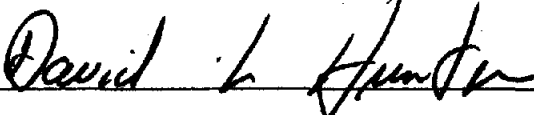
		<u>1986</u>			<u>1987</u>	
	Current Law	Proposed Law	Difference		Current Law	Proposed Law
Revenues	-0-	-0-	-0-		-0-	-0-
Expenditures:						
Operations	-0-	\$ 1,000	\$ 1,000		-0-	\$ 500
General Fund	-0-	\$ 1,000	\$ 1,000		-0-	\$ 500

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

NONE

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The proposed change would actually bring about a monetary savings to the State by reducing potential additional costs of rule-making and court litigation.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 30, 1985

HB 396

APPROVED BY COMM. ON
NATURAL RESOURCES

1 STATEMENT OF INTENT

2 HOUSE BILL 396

3 House Natural Resources Committee

4

5 A statement of intent is desirable for this bill
6 because it authorizes the board of natural resources and
7 conservation to make rules on the new material enacted in
8 the bill. The rules would implement section 1 of the bill,
9 which establishes criteria for the department of natural
10 resources and conservation to reject an application for a
11 beneficial water use permit that is not in good faith or
12 does not show a bona fide intent to appropriate water.

13 The intent is to adopt those rules necessary to
14 implement the criteria listed in section 1. Because the
15 criteria are specific, the rulemaking authority would be
16 limited to adopting rules:

- 17 (1) defining a proposed place of use;
- 18 (2) prescribing the contents of a detailed project
19 plan and of a general project plan;
- 20 (3) defining reasonable time lines, not to exceed 10
21 years, for completion of projects; and
- 22 (4) prescribing the detailed information to implement
23 criteria relative to applications for water use above that
24 amount of water which will be used solely by the applicant.

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THIRD READING

HB 396

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department orders the time extended, it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within 30 days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

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