

SENATE BILL NO. 223

INTRODUCED BY NEUMAN

BY REQUEST OF THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION

IN THE SENATE

| | |
|-------------------|--|
| January 23, 1985 | Introduced and referred to Committee on Natural Resources. |
| January 24, 1985 | Fiscal Note requested. |
| January 31, 1985 | Fiscal Note returned. |
| February 9, 1985 | Committee recommend bill do pass as amended. Report adopted. |
| February 11, 1985 | Bill printed and placed on members' desks. |
| February 12, 1985 | Second reading, pass consideration. |
| February 14, 1985 | Second reading, do pass as amended. |
| February 15, 1985 | Correctly engrossed. |
| February 16, 1985 | Third reading, passed. Ayes, 46; Noes, 2. |
| | Transmitted to House. |

IN THE HOUSE

| | |
|-------------------|--|
| February 27, 1985 | Introduced and referred to Committee on Natural Resources. |
| March 18, 1985 | Committee recommend bill be concurred in. Report adopted. |

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| March 20, 1985 | Second reading, concurred in. |
| March 22, 1985 | Third reading, concurred in. |
| | Returned to Senate. |

IN THE SENATE

| | |
|----------------|------------------------------|
| March 22, 1985 | Received from House. |
| March 23, 1985 | Sent to enrolling. |
| | Reported correctly enrolled. |

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 2 INTRODUCED BY Neuman
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 6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 7 FILING OF WATER RIGHT TRANSFER CERTIFICATES WITH THE
 8 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING
 9 SECTIONS 85-2-421, 85-2-424, AND 85-2-426, MCA; REPEALING
 10 SECTION 85-2-425, MCA; AND PROVIDING AN EFFECTIVE DATE."
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 85-2-421, MCA, is amended to read:
 14 "85-2-421. Purpose. The purpose of 85-2-421 through
 15 85-2-426 is to facilitate the maintenance of a reliable
 16 record of water right ownership on both the state and local
 17 levels by requiring that water right transfers be recorded
 18 filed with the county-clerk-and-recorder department and that
 19 the county---clerk--and--recorder department notify the
 20 department-and-the water court of each transfer recorded
 21 filed."

22 Section 2. Section 85-2-424, MCA, is amended to read:
 23 "85-2-424. Recordation Filing. (1) The parties to a
 24 transfer of a water right or their agents or representatives
 25 shall record file with the county--clerk--and--recorder

1 department a water right transfer certificate within 60 days
 2 of recording a deed or other instrument evidencing a
 3 transfer of real property.

4 (2) Except in the case of a transfer of real property
 5 served by a public service water supply, when any person
 6 presents for recording a deed or other instrument evidencing
 7 a transfer of real property, the realty transfer certificate
 8 shall note whether or not the transfer includes a transfer
 9 of water rights. If the realty transfer certificate notes a
 10 transfer of water rights, the clerk and recorder shall
 11 provide such person the form prescribed under 85-2-423 for
 12 the transfer of water rights. The recording of the deed or
 13 other instrument shall not be delayed because of the
 14 transfer of the water rights.

15 (3) The county clerk and recorder shall ~~cause--a~~
 16 ~~permanent-record-of-the-water-right-transfer-certificate--to~~
 17 ~~be--made~~ send to the department a list of all transfers that
 18 involve transfers of water rights. The list must be sent
 19 every month and must include all transfers for the month
 20 immediately preceding the date of submittal to the
 21 department. The list must include the names and addresses of
 22 all parties to the transfer and a legal description of the
 23 land subject to the transfer.

24 (4) The ~~county-clerk--and--recorder~~ department shall
 25 send a copy of the water right transfer certificate to the

1 department-and-to-the office of the chief water judge."

2 Section 3. Section 85-2-426, MCA, is amended to read:

3 "85-2-426. Fee. (1) The board of natural resources and
4 conservation shall by rule prescribe a fee that must cover
5 the cost to the department in processing the copy of the
6 transfer certificate. The fee must be paid at the time of
7 recordation filing of the water right transfer certificate.

8 ~~(2) The county clerk and recorder shall:~~

9 ~~(a) collect the~~ The fee required under subsection (1)
10 and forward it to the department to must be deposited in the
11 water right appropriation account provided for in 85-2-318,
12 and

13 ~~(b) charge and collect a recording fee as provided for~~
14 ~~in 7-4-2631 for recording the document."~~

15 NEW SECTION. Section 4. Penalty. (1) The parties to a
16 transfer of a water right are responsible for the filing of
17 a water right transfer certificate with the department in
18 accordance with 85-2-424.

19 (2) A person who violates 85-2-424 is liable for a
20 civil penalty of not more than \$500.

21 (3) An action to recover the penalty must be brought
22 by the department and filed in the district court for the
23 first judicial district.

24 (4) Any penalty fee collected under this section must
25 be deposited in the water right appropriation account

1 provided for in 85-2-318.

2 NEW SECTION. Section 5. Extension of authority. Any
3 existing authority of the board or department of natural
4 resources and conservation to make rules on the subject of
5 the provisions of this act is extended to the provisions of
6 this act.

7 NEW SECTION. Section 6. Repealer. Section 85-2-425,
8 MCA, is repealed.

9 NEW SECTION. Section 7. Codification instruction.
10 Section 4 is intended to be codified as an integral part of
11 Title 85, chapter 2, part 4, and the provisions of Title 85,
12 chapter 2, apply to section 4.

13 NEW SECTION. Section 8. Effective date. This act is
14 effective July 1, 1985.

-End-

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. FNN 228-85Form BD-15

In compliance with a written request received January 24, 19 85, there is hereby submitted a Fiscal Note for Senate Bill 223/corrected 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 223 proposes to amend the current procedure of processing water right transfer certificates.

ASSUMPTIONS:

1. Current water right ownership transfers number 1680 per year.
2. Compliance will increase threefold, thus transfers will number 5040 per year.
3. Current water right transfer problem solving costs \$3,000 per year in personal services which will be eliminated under this law.
4. Current personal services for processing 1,680 transfers will cost \$14,000 per year and are adjusted proportionately with the transfer increases.
5. Current operating expenses for processing 1,680 transfers will cost \$3,000 per year and are adjusted proportionately with the transfer increases.
6. The Water Rights Bureau currently receives \$5.00 of each \$10.00 transfer fee collected by the County Clerk and Recorder.
7. New listing of transfers required of County Clerk and Recorder will cost \$1.00 per transfer (\$5,040 per year).
8. Fees for water right transfers will be set at \$10.00 per transfer by the Board of Natural Resources and Conservation.
9. Compliance checks is a new responsibility which will result in additional costs of \$6,000 per year.
10. Elimination of return mail problems will decrease personal service costs by \$1,000 per year.

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: JAN 31, 1985

SB 223
Corrected

FISCAL IMPACT:

| | <u>Current</u> | <u>FY 86 Proposed</u> | <u>Difference</u> | <u>Current</u> | <u>FY 87 Proposed</u> | <u>Difference</u> |
|----------------------|-----------------|---------------------------|-------------------|-----------------|---------------------------|-------------------|
| Expenditures | | | | | | |
| Personal Services | \$14,000 | \$38,000 | \$24,000 | \$14,000 | \$38,000 | \$24,000 |
| Operations | 3,000 | 14,040 | 11,040 | 3,000 | 14,040 | 11,040 |
| TOTAL | <u>\$17,000</u> | <u>\$52,040</u> | <u>\$35,040</u> | <u>\$17,000</u> | <u>\$52,040</u> | <u>\$35,040</u> |
| General Fund | \$ 8,600 | \$ 1,640 | (\$ 6,960) | \$ 8,600 | \$ 1,640 | (\$ 6,960) |
| Earmarked Spec. Rev. | 8,400 | 50,400 | 35,040 | 8,400 | 50,400 | 35,040 |

AFFECT ON COUNTY AND OTHER LOCAL REVENUE OR EXPENDITURES:

Fees and duties required of County Clerk and Recorder offices are reduced as owners would file initial water right transfers with the Department. The County Clerk and Recorder offices may experience cost increases associated with providing the Department with monthly lists of all transfers involving water rights.

LONG-RANGE IMPACT:

The cost for processing return mail will decrease each year as increased accuracy is realized in the water right owner records. Immediate savings from increased compliance will not be recognized until a higher percentage of the water rights record is updated. The Department's liability for not notifying existing water right owners of permit applications and decrees may decrease with a more accurate water right ownership record. Conversely if legislation fails, costs for return mail will increase each year compliance is not met.

TECHNICAL NOTE:

NONE

APPROVED BY COMM. ON
NATURAL RESOURCES

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15 85-2-426 is to facilitate the maintenance of a reliable
16 record of water right ownership on both the state and local
17 levels by requiring that water right transfers be recorded
18 filed with the county-clerk-and-recorder department and that
19 the county--clerk--and--recorder department notify the
20 department-and-the water court AND THE COUNTY CLERK AND
21 RECORDER of each transfer recorded filed."
22 Section 2. Section 85-2-424, MCA, is amended to read:
23 "85-2-424. Recordation Filing. (1) The parties to a
24 transfer of a water right or their agents or representatives
25 shall record file with the county--clerk--and--recorder

1 department a water right transfer certificate within 60 days
2 of recording a deed or other instrument evidencing a
3 transfer of real property.
4 (2) Except in the case of a transfer of real property
5 served by a public service water supply, when any person
6 presents for recording a deed or other instrument evidencing
7 a transfer of real property, the realty transfer certificate
8 shall note whether or not the transfer includes a transfer
9 of water rights. If the realty transfer certificate notes a
10 transfer of water rights, the clerk and recorder shall
11 provide such person the form prescribed under 85-2-423 for
12 the transfer of water rights. The recording of the deed or
13 other instrument shall not be delayed because of the
14 transfer of the water rights.
15 (3) The county clerk and recorder shall ~~cause--a~~
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18 involve transfers of water rights. The list must be sent
19 every month and must include all transfers for the month
20 immediately preceding the date of submittal to the
21 department. The list must include the names and addresses of
22 all parties to the transfer and a legal description of the
23 land subject to the transfer.
24 (4) The ~~county-clerk--and--recorder~~ department shall
25 send a REFERENCE copy of the water right transfer

1 certificate to the ~~department-and-to-the~~ office of the chief
 2 water judge AND TO THE COUNTY CLERK AND RECORDER IN THE
 3 COUNTY IN WHICH THE TRANSFER OCCURRED."

4 Section 3. Section 85-2-426, MCA, is amended to read:

5 "85-2-426. Fee. (1) The board of natural resources and
 6 conservation shall by rule prescribe a fee that must cover
 7 the cost to the department AND THE COUNTY CLERK AND RECORDER
 8 in processing ~~the copy of~~ the transfer certificate. The fee
 9 must be paid at the time of recordation filing of the water
 10 right transfer certificate.

11 (2) ~~The county clerk and recorder shall:~~

12 ~~(a)--collect--the~~ The fee required under subsection (1)
 13 ~~and forward it to the department to~~ must be deposited in the
 14 water right appropriation account provided for in 85-2-318~~7~~.
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18 NEW SECTION. Section 4. Penalty. (1) The parties to a
 19 transfer of a water right are responsible for the filing of
 20 a water right transfer certificate with the department in
 21 accordance with 85-2-424.

22 (2) A person who violates 85-2-424(1) is liable for a
 23 civil penalty of not more than \$500.

24 (3) An action to recover the penalty must be brought
 25 by the department and filed in the district court for the

1 first judicial district.

2 (4) Any penalty fee collected under this section must
 3 be deposited in the water right appropriation account
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5 NEW SECTION. Section 5. Extension of authority. Any
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12 NEW SECTION. Section 7. Codification instruction.
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 14 Title 85, chapter 2, part 4, and the provisions of Title 85,
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THIRD READING
SB 223

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