

HB 775 INTRODUCED BY SPAETH
TRANSFERS DEPARTMENT OF NATURAL RESOURCES &
CONSERVATION PROPRIETARY WATER FUNCTIONS TO
DEPARTMENT OF STATE LANDS
BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES &
CONSERVATION

2/16 INTRODUCED
2/16 REFERRED TO NATURAL RESOURCES
2/16 FISCAL NOTE REQUESTED
2/18 HEARING
2/18 TABLED IN COMMITTEE
2/21 FISCAL NOTE RECEIVED

1 House BILL NO. 775
 2 INTRODUCED BY Spauld
 3 BY REQUEST OF THE DEPARTMENT OF
 4 NATURAL RESOURCES AND CONSERVATION
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO TRANSFER FUNCTIONS
 7 RELATING TO STATE-OWNED WATER PROJECTS FROM THE DEPARTMENT
 8 AND BOARD OF NATURAL RESOURCES AND CONSERVATION TO THE
 9 DEPARTMENT OF STATE LANDS AND BOARD OF LAND COMMISSIONERS;
 10 GENERALLY REVISING THE LAWS TO CONFORM TO THE TRANSFER;
 11 AMENDING SECTIONS 85-1-102, 85-1-201, 85-1-204, 85-1-214,
 12 85-1-406, AND 85-6-109, MCA; AND PROVIDING AN EFFECTIVE
 13 DATE."
 14

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

16 NEW SECTION. Section 1. Functions of the department
 17 and board of natural resources and conservation transferred
 18 to department of state lands and board of land commissioners
 19 -- name change. (1) The functions relating to state-owned
 20 water projects in 85-6-109 and Title 85, chapter 1, parts 2
 21 through 5, except for 85-1-201, 85-1-203 through 85-1-205,
 22 85-1-214, 85-1-223, and 85-1-332, are transferred from the
 23 department and board of natural resources and conservation
 24 to the department of state lands and board of land
 25 commissioners.

1 (2) Unless inconsistent with [this act], any reference
 2 to "department of natural resources and conservation" or
 3 "department" meaning the department of natural resources and
 4 conservation in the sections described in subsection (1) is
 5 changed to "department of state lands", and any reference to
 6 "board of natural resources and conservation" or "board"
 7 meaning the board of natural resources and conservation is
 8 changed to "board of land commissioners".

9 (3) The code commissioner shall conform internal
 10 references and grammar to these changes.

11 (4) The governor by executive order may assign to the
 12 department of state lands and the board of land
 13 commissioners in a manner consistent with [this act]
 14 functions allocated to the department and board of natural
 15 resources and conservation by the 50th legislature and not
 16 transferred by [this act].

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

18 "85-1-102. Definitions. Unless the context requires
 19 otherwise, in this chapter the following definitions apply:

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

22 (2) "Cost of works" means the cost of construction;
 23 the cost of all lands, property, rights, easements, and
 24 franchises acquired which are deemed necessary for the
 25 construction; the cost of all water rights acquired or

1 exercised by the department of state lands in connection
 2 with those works; the cost of all machinery and equipment,
 3 financing charges, interest prior to and during construction
 4 and for a period not exceeding 3 years after the completion
 5 of construction; cost of engineering and legal expenses,
 6 plans, specifications, surveys, estimates of cost, and other
 7 expenses necessary or incident to determining the
 8 feasibility or practicability of any project; administrative
 9 expense; and such other expenses as may be necessary or
 10 incident to the financing herein authorized and the
 11 construction of the works and the placing of the same in
 12 operation.

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

16 (4) "Owner" means all individuals, irrigation
 17 districts, drainage districts, flood control districts,
 18 incorporated companies, societies, or associations having
 19 any title or interest in any properties, rights, easements,
 20 or franchises to be acquired.

21 (5) "Private person" means any individual,
 22 association, partnership, corporation, or other
 23 nongovernmental entity not eligible for loans and grants
 24 under 85-1-605 but does not include a governmental entity
 25 such as an agency, local government, or political

1 subdivision of the state, the United States, or any agency
 2 thereof, or any other governmental entity.

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

7 (7) "Public benefits" means those benefits that accrue
 8 from a water development project or activity to persons
 9 other than the private grant or loan recipient and that
 10 enhance the common well-being of the people of Montana.
 11 Public benefits include but are not limited to recreation,
 12 flood control, erosion reduction, agricultural flood damage
 13 reduction, water quality enhancement, sediment reduction,
 14 access to recreation opportunities, and wildlife
 15 conservation.

16 (8) "Water development account" means a separate
 17 account created by 85-1-617 within the state special revenue
 18 fund of the state treasury to finance loans under the
 19 provisions of the water development program to agencies,
 20 local governments, and political subdivisions of the state,
 21 private persons, and any other eligible recipients from
 22 proceeds of bonds issued under part 6 of this chapter.

23 (9) "Water development activity" means an action or
 24 program to protect and enhance water-based recreation or to
 25 protect or enhance water resources for the benefit of

1 agriculture, flood control, or other uses, including but not
 2 limited to such purposes as the promotion of efficient use
 3 of water in agriculture, the improvement of water quality in
 4 agriculture and other nonpoint source uses, the protection
 5 and enhancement of water-based recreation, the control of
 6 erosion of streambanks and control of sedimentation of
 7 rivers and streams, and providing greater local and state
 8 control of Montana water resources. Water development
 9 activities may provide any combination of marketable and
 10 nonmarketable benefits.

11 (10) "Water development state special revenue account"
 12 means a separate account created by 85-1-604 within the
 13 state special revenue fund of the state treasury for the
 14 purposes of the water development program as set forth in
 15 85-1-604.

16 (11) "Water development project" means a project as
 17 defined in subsection (6), except that water development
 18 projects are not limited to projects owned or operated by
 19 the department.

20 (12) "Water development debt service fund" means a
 21 separate fund created by 85-1-603 within the debt service
 22 fund type of the state treasury to be used as provided in
 23 85-1-619.

24 (13) "Works" means all property, rights, easements, and
 25 franchises relating thereto and deemed necessary or

1 convenient for their operation and all water rights acquired
 2 or exercised by the department of state lands in connection
 3 with those works and includes all means of conserving and
 4 distributing water, including, without limiting the
 5 generality of the foregoing, reservoirs, dams, diversion
 6 canals, distributing canals, waste canals, drainage canals,
 7 dikes, lateral ditches and pumping units, mains, pipelines,
 8 and waterworks systems and includes all such works for the
 9 conservation, development, storage, distribution, and
 10 utilization of water, including without limiting the
 11 generality of the foregoing, works for the purpose of
 12 irrigation, flood prevention, drainage, fish and wildlife,
 13 recreation, development of power, watering of stock,
 14 supplying of water for public, domestic, industrial, or
 15 other uses and for fire protection."

16 Section 3. Section 85-1-201, MCA, is amended to read:
 17 "85-1-201. Rules of board. (1) The board may adopt
 18 from time to time, as necessary or expedient, suitable rules
 19 for the administration of this--chapter 85-1-203 through
 20 85-1-205, 85-1-214, 85-1-223, 85-1-332, and Title 85,
 21 chapter 1, parts 1 and 6.

22 (2) The board of land commissioners may adopt rules
 23 for the administration of the remaining sections of this
 24 chapter and 85-1-204, 85-1-214, and 85-6-109."

25 Section 4. Section 85-1-204, MCA, is amended to read:

1 "85-1-204. Department of state lands powers over state
 2 waters. (1) The department of state lands, with the approval
 3 of the board of land commissioners, may sell, lease, and
 4 otherwise dispose of all waters which may be impounded under
 5 parts 2 through 5 of this chapter, and the water may be sold
 6 for the purpose of irrigation, development of power,
 7 watering of stock, or any other purpose. The department,
 8 with the approval of the board, may also lease water under
 9 the state water leasing program established under the
 10 provisions of 85-2-141. ~~To the extent that it may be~~
 11 ~~necessary to carry out this chapter and subject to a~~
 12 ~~compliance with the other provisions of this chapter, the~~
 13 ~~department has full control of all the water of the state~~
 14 ~~not under the exclusive control of the United States and not~~
 15 ~~vested in private ownership, and it shall take such steps as~~
 16 ~~may be necessary to appropriate and conserve the same for~~
 17 ~~the use of the people.~~ The authority of the department of
 18 state lands conferred by this chapter extends and applies to
 19 rights to the natural flow of the waters of this state which
 20 it may acquire, with the approval of the board of land
 21 commissioners, by condemnation, purchase, exchange,
 22 appropriation, or agreement.

23 (2) For the purpose of regulating the diversion of
 24 those waters, the department of state lands may enter upon
 25 the means and place of use of all appropriators for making

1 surveys of respective rights and seasonal needs.

2 (3) When constructing or operating projects or works
 3 pursuant to parts 2 through 5 of this chapter, the
 4 department of state lands: ~~The department may take into~~
 5 ~~consideration the decrees of the courts of this state having~~
 6 ~~jurisdiction which purport to adjudicate the waters of a~~
 7 ~~stream or its tributaries, and a fair, reasonable, and~~
 8 ~~equitable reconciliation shall be made between the claimants~~
 9 ~~asserting rights under different decrees and between decreed~~
 10 ~~rights and asserted rights of appropriation not adjudicated~~
 11 ~~by any court.~~

12 (4)(a) ~~The department,~~ at its discretion, may hold
 13 hearings relating to the rights of respective claimants
 14 after first giving such notice as it considers appropriate
 15 and make findings of the date and quantity of appropriation
 16 and use of all claimants which the department of state lands
 17 will recognize and observe in diverting the waters which it
 18 owns. The department of state lands may police and
 19 distribute to the owner of the recognized appropriation the
 20 waters due him upon request and under terms agreed upon.

21 (5)(b) ~~The department,~~ when engaged in controlling and
 22 dividing the natural flow of a stream under the authority
 23 granted by this chapter, is exercising a police power of the
 24 state, and water commissioners appointed by any court may
 25 not deprive the department of state lands of any of the

1 waters owned or administered under agreement with respective
 2 owners. The owner of a prior right contending that the
 3 department of state lands is not recognizing and respecting
 4 the appropriation may resort to a court for the purpose of
 5 determining whether or not the rights of the claimant have
 6 been invaded, and the department of state lands shall
 7 observe the terms of the final decree.

8 ~~{6}~~(4) When the department of state lands impounds or
 9 acquires the right of appropriation of the waters of a
 10 stream it may divert or authorize the diversion at any point
 11 on the stream or any portion thereof when it is done without
 12 injury to a prior appropriator.

13 {5} This section may not be construed as a limitation
 14 on the authority of the department under this chapter."

15 Section 5. Section 85-1-214, MCA, is amended to read:

16 "85-1-214. Exercise of department powers -- scope of
 17 jurisdiction. {1} The department may exercise any of its
 18 powers in:

19 ~~{1}~~{a} an adjoining state, unless the exercise of that
 20 power is not permitted under the laws of that state or of
 21 the United States;

22 ~~{2}~~{b} a national forest or public domain of the
 23 United States adjoining or located in the state of Montana,
 24 unless the exercise of those powers is not permitted under
 25 the laws of the United States;

1 ~~{3}~~{c} an adjoining country, unless the exercise of
 2 those powers is not permitted under the laws of that country
 3 or of the United States or under the treaties between that
 4 country and the United States.

5 {2} Except as provided in 85-1-223, the department of
 6 state lands may exercise any of its powers in any adjoining
 7 state or country, unless the exercise of those powers is not
 8 permitted under the laws of that country, or any national
 9 forest or public domain of the United States as may be
 10 necessary or convenient for carrying out its
 11 responsibilities related to state-owned water projects."

12 Section 6. Section 85-1-406, MCA, is amended to read:

13 "85-1-406. Entry on land. Any employee or agent of the
 14 department authorized by the ~~director~~ commissioner may enter
 15 upon any land to carry out the purposes of 85-1-401 through
 16 85-1-409, including but not limited to entry to make
 17 inspections the department considers necessary of the
 18 project, entry to salvage or remove project property, and
 19 entry to make physical alterations to project property. The
 20 department shall give reasonable notice to the landowner of
 21 its intention to enter upon the land. The department is
 22 responsible for actual damages done to any property."

23 Section 7. Section 85-6-109, MCA, is amended to read:

24 "85-6-109. Operation of projects with water users'
 25 association. (1) As used in this section, "department" means

1 the department of ~~natural--resources--and-conservation~~ of
 2 state lands provided for in Title 2, chapter 15, part 99 32,
 3 and "association" means a water users' association.

4 (2) Whenever the department proposes a program of
 5 maintenance, repair, operation, or alteration of a project
 6 in excess of \$25,000, the cost of which will be borne by an
 7 association pursuant to the terms of a water marketing
 8 contract, the association shall be informed of the program
 9 and given an opportunity to comment. The department shall
 10 notify the association of its decision. If the association
 11 believes the program to be unnecessary or excessive in cost,
 12 it may appeal the department decision to the board of
 13 ~~natural-resources-and--conservation~~ land commissioners as
 14 provided for in 85-1-212. The board shall notify the
 15 association of its decision. If the board's decision is
 16 adverse to the association, the association may file within
 17 30 days of receipt of notice of the board's decision a
 18 complaint to review the board's decision in the district
 19 court in any county where all or part of the project works
 20 is located or in Lewis and Clark County.

21 (3) If a complaint is filed under subsection (2), the
 22 court shall hold a trial de novo on the question of
 23 necessity of the department program and the question of
 24 excessive costs. If the association prevails, the court may
 25 award costs to the association. The court may specify an

1 acceptable program of maintenance, repair, operation, or
 2 alteration or may order the department and the association
 3 to develop a program, subject to court approval.

4 (4) Whenever a program of maintenance, repair,
 5 operation, or alteration is proposed, the department shall
 6 assist the association in attempting to secure sources of
 7 financing, including federal funds.

8 (5) Whenever the department proposes to abandon, sell,
 9 or otherwise dispose of a project which involves a water
 10 users' association, the department shall notify the
 11 association. Before the department may take further action
 12 to abandon, sell, or otherwise dispose of a project which
 13 involves a water users' association, the department must
 14 receive a petition approving the abandonment, sale, or
 15 disposition which is signed by stockholders of the
 16 association representing 66 2/3% or more of the issued and
 17 outstanding stock of the association. If, within 30 days of
 18 receipt of the final proposal of abandonment, sale, or other
 19 disposal, stockholders of the association representing 15%
 20 or more of the issued and outstanding stock of the
 21 association file a petition of protest with the department,
 22 the project may not be abandoned, sold, or otherwise
 23 disposed of without the consent of the legislature."

24 NEW SECTION. Section 8. Transition. The provisions of
 25 2-15-131 through 2-15-137 apply to the transfer of functions

1 under this act.

2 NEW SECTION. Section 9. Extension of authority. Any
3 existing authority of the department of state lands or the
4 board of land commissioners to make rules on the various
5 functions transferred by the provisions of this act is
6 extended to the provisions of this act.

7 NEW SECTION. Section 10. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 11. Effective date. This act is
14 effective July 1, 1987.

-End-