

HOUSE BILL 702

Introduced by Cobb

2/14	Introduced
2/15	Referred to Natural Resources
2/16	Fiscal Note Requested
2/17	Hearing
2/17	Tabled in Committee
2/27	Fiscal Note Received

1 HOUSE BILL NO. 702  
2 INTRODUCED BY 666  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE  
5 DEPARTMENT OF FISH, WILDLIFE, AND PARKS OR THE DEPARTMENT OF  
6 NATURAL RESOURCES AND CONSERVATION MAY LEASE EXISTING WATER  
7 RIGHTS TO PROTECT INSTREAM FLOWS IF THE AREA WHERE THE LEASE  
8 WOULD BE EXERCISED IS EXPERIENCING A STATE OF DISASTER OR  
9 EMERGENCY BECAUSE OF DROUGHT; AND AMENDING SECTION 85-2-404,  
10 MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Leasing during drought  
14 disaster or emergency. (1) Upon declaring under 10-3-104  
15 that an area is experiencing a state of disaster or  
16 emergency because of drought, the governor may authorize the  
17 department of fish, wildlife, and parks or the department to  
18 enter into written agreements with persons to lease existing  
19 rights to protect instream flows. A lease entered into under  
20 this section is subject to the following conditions:

21 (a) The leasing of an existing right may not adversely  
22 affect any holder of an existing right with an earlier  
23 priority date unless the holder consents to the lease in  
24 writing.

25 (b) A right leased under this section has a priority

1 date of July 1, 1973, or the date of the last claim of  
2 existing right on the stream, whichever is earlier. If the  
3 lease is not exercised or if the lease reverts to the  
4 lessor, the right has the same priority date that existed  
5 before the lease.

6 (c) The flow rate of the leased right may be no larger  
7 than the flow rate held by the lessor before the lease.  
8 However, flow rate and any other aspect of the leased right  
9 are limited to the historical beneficial use of the right.

10 (d) The protection of instream flows under a lease  
11 pursuant to this section may occur only during the period or  
12 periods when the area affected by the lease is declared to  
13 be experiencing a state of disaster or emergency.

14 (2) The department of fish, wildlife, and parks or the  
15 department may enter into options to lease water rights to  
16 protect instream flows. An option may be for a period of no  
17 more than 10 years and may be exercised only if the governor  
18 declares that the area where the lease would be exercised is  
19 experiencing a state of disaster or emergency because of  
20 drought.

21 (3) The governor may use emergency funds appropriated  
22 under 10-3-312, if available, to facilitate leasing under  
23 this section.

24 (4) The department of fish, wildlife, and parks or the  
25 department may expend agency money to facilitate leasing

under this section if proper authority and necessary budget approval exist or are obtained.

**Section 2.** Section 85-2-404, MCA, is amended to read:

**"85-2-404. Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the

appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to [section 1] does not constitute an abandonment by the lessor or serve as evidence that could be used to establish an abandonment by the lessor of any part of the right.

~~f4~~(5) Subsections (1) and (2) do not apply to existing rights until they have been determined in accordance with part 2 of this chapter."

**NEW SECTION. Section 3. Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

**NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

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