

HOUSE BILL NO. 388

INTRODUCED BY GILBERT, WANZENRIED, TOOLE, HARPER, WATERMAN  
BY REQUEST OF THE DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE HOUSE

JANUARY 28, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
MARCH 19, 1993	ON MOTION, REPRESENTATIVE RANEY REMOVED AND REPRESENTATIVE GILBERT ADDED AS SPONSORS.
MARCH 20, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 23, 1993	PRINTING REPORT.
MARCH 27, 1993	SECOND READING, DO PASS AS AMENDED.
MARCH 29, 1993	ENGROSSING REPORT.
MARCH 30, 1993	THIRD READING, PASSED. AYES, 64; NOES, 36.
MARCH 31, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
APRIL 12, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 13, 1993	SECOND READING, CONCURRED IN.
APRIL 14, 1993	THIRD READING, CONCURRED IN. AYES, 32; NOES, 17.
	RETURNED TO HOUSE.

IN THE HOUSE

APRIL 14, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *388*  
2 INTRODUCED BY *Caney* ~~UNKNOWN~~ *Tim Hays*  
3 *Waterman* BY REQUEST OF THE DEPARTMENT  
4 OF HEALTH AND ENVIRONMENTAL SCIENCES  
5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE  
7 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT  
8 FEES TO OFFSET WATER QUALITY PROGRAM COSTS FOR ISSUING  
9 PERMITS AND MONITORING ACTIVITY; REQUIRING THE DEPARTMENT TO  
10 PROVIDE NOTICE OF THE FEE ASSESSMENT; PROVIDING AN APPEAL  
11 PROCEDURE FOR RESOLUTION OF FEE DISPUTES; PROVIDING FOR THE  
12 DISPOSITION OF FEES; AND PROVIDING AN APPLICABILITY DATE."  
13  
14 WHEREAS, section 402 of the Federal Water Pollution  
15 Control Act provides that states may be authorized by the  
16 U.S. Environmental Protection Agency to administer the  
17 national pollutant discharge elimination system wastewater  
18 discharge permit program; and  
19 WHEREAS, the Montana Department of Health and  
20 Environmental Sciences administers all water quality permit  
21 programs in Montana through an agreement with the U.S.  
22 Environmental Protection Agency under section 402 of the  
23 Federal Water Pollution Control Act; and  
24 WHEREAS, the Department of Health and Environmental  
25 Sciences' water quality permit programs are inextricably

1 linked to its other water pollution control and ambient  
2 water quality monitoring programs; and  
3 WHEREAS, both the citizens and businesses of the State  
4 of Montana benefit from implementation of these programs by  
5 the Department of Health and Environmental Sciences; and  
6 WHEREAS, federal grants for Montana's water quality  
7 programs are currently inadequate and are being further  
8 reduced, and Montana's general fund is stressed by competing  
9 government programs; and  
10 WHEREAS, if the Department of Health and Environmental  
11 Sciences fails to obtain authorization, the national  
12 pollutant discharge elimination system program will be  
13 administered within Montana by the U.S. Environmental  
14 Protection Agency; and  
15 WHEREAS, the persons who discharge or may discharge  
16 wastes to Montana's water resources and who are required to  
17 obtain a water quality permit should pay a fair share to  
18 ensure protection of Montana's water resources; and  
19 WHEREAS, the annual fee system may be an incentive to  
20 the regulated community to design activities that reduce the  
21 amount of pollutants discharged to state waters or otherwise  
22 lower the potential for harm to state waters.  
23 THEREFORE, the Legislature of the State of Montana finds  
24 that it is appropriate to authorize the development of  
25 permit fee systems to support Montana's comprehensive water

1 pollution control program.

2  
3 **STATEMENT OF INTENT**

4 A statement of intent is required for this bill because  
5 it authorizes the board of health and environmental sciences  
6 to adopt rules regarding fees to be assessed to applicants  
7 for or holders of certain permits or licenses. The intent of  
8 this bill is to allow the department of health and  
9 environmental sciences to charge for its services in  
10 administering its comprehensive water permitting program.  
11 These services include both the permitting function and  
12 followup monitoring and enforcement programs to ensure that  
13 activities are complying with the terms and conditions of  
14 the permit. In addition, the legislature anticipates that  
15 fees will be assessed to applicants or permittees under  
16 other statutory authorities for which an exclusion from a  
17 water quality permit requirement is provided by rule.

18 The board shall attempt to develop a structured fee  
19 system that can be clearly applied to all activities  
20 addressed under this bill and that results in revenue that  
21 approximates the department's documented cost of  
22 implementing its comprehensive water quality permit program.  
23 The permit review fee system must be based on an average  
24 assessment of the department's direct and indirect cost of  
25 reviewing permit applications, including the cost of support

1 services, inservice training, and correspondence. The annual  
2 fee system may involve fees that are prescribed by category  
3 according to the criteria in [section 1(2)(b)].

4 Further, the board's rules should provide a mechanism  
5 for coordinating collection of fees for the review and  
6 monitoring of projects and activities authorized by [section  
7 1] with any other fees that are collected by other state  
8 agencies for the review and monitoring of those projects and  
9 activities. The fees collected by the department may not  
10 duplicate the fees collected by another state agency for  
11 services in reviewing permit, certificate, and license  
12 applications and in conducting monitoring.

13  
14 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:**

15 **NEW SECTION.** **Section 1. Fees authorized for recovery**  
16 **-- process -- rulemaking.** (1) The board shall by rule  
17 prescribe fees to be assessed by the department that are  
18 sufficient to cover the board's and department's documented  
19 costs, both direct and indirect, of:

20 (a) reviewing and acting upon an application for a  
21 permit, permit modification, permit renewal, certificate,  
22 license, or other authorization required by rule under  
23 75-5-201 or 75-5-401;

24 (b) reviewing and acting upon a petition for a  
25 degradation allowance under 75-5-303;

1 (c) reviewing and acting upon an application for a  
2 permit, certificate, license, or other authorization for  
3 which an exclusion is provided by rule from the permitting  
4 requirements established under 75-5-401;

5 (d) enforcing the terms and conditions of a permit or  
6 authorization identified in subsections (1)(a) through  
7 (1)(c). If the permit or authorization is not issued, the  
8 department shall return this portion of any application fee  
9 to the applicant.

10 (e) conducting compliance inspections and monitoring  
11 effluent and ambient water quality;

12 (f) conducting modeling, analyses, and demonstrations  
13 in areas that include but are not limited to the  
14 determination of total maximum daily loads and waste load  
15 allocation;

16 (g) identifying and monitoring impaired waters;

17 (h) preparing and maintaining public information  
18 systems on effluent limitation, discharges, compliance, and  
19 ambient water quality;

20 (i) providing water quality training and education  
21 programs for the department or public; and

22 (j) preparing water quality rules or guidance  
23 documents.

24 (2) The rules promulgated by the board under this  
25 section must include:

1 (a) a fee on all applications for permits or  
2 authorizations, as identified in subsections (1)(a) through  
3 (1)(c), that is sufficient to cover the department's cost of  
4 reviewing and acting upon the applications; and

5 (b) an annual fee to be assessed according to the  
6 potential for harm to state waters by the activity under  
7 permit or authorization. The annual fee must take into  
8 consideration the volume and concentration of waste  
9 discharged into state waters or the volume and concentration  
10 of process materials or wastes placed in an impoundment or  
11 other containment facility subject to the permit  
12 requirements of this chapter. The annual fee must be  
13 sufficient to pay the department's estimated cost of  
14 conducting all tasks described under subsection (1) after  
15 subtracting:

16 (i) the fees collected under subsection (2)(a);

17 (ii) state general fund appropriations for functions  
18 administered under this chapter; and

19 (iii) federal grants for functions administered under  
20 this chapter.

21 (3) For purposes of subsection (2), the department's  
22 estimated cost of conducting the tasks described under  
23 subsection (1) is the amount authorized by the legislature  
24 for the department's water quality programs.

25 (4) If the applicant or holder fails to pay a fee

1 assessed under this section or rules adopted under this  
2 section in a timely manner, the department may:

3 (a) impose an additional assessment consisting of not  
4 more than 50% of the fee plus interest on the required fee  
5 computed at the rate established under 15-31-510(3); or

6 (b) suspend the permit or exclusion. The department may  
7 lift the suspension at any time up to 1 year after the  
8 suspension occurs if the holder has paid all outstanding  
9 fees, including all penalties, assessments, and interest  
10 imposed under subsection (4)(a).

11 (5) Fees collected pursuant to this section must be  
12 deposited in an account in the state special revenue fund  
13 pursuant to [section 2].

14 (6) The department shall give written notice to each  
15 person assessed a fee under this section of the amount of  
16 fee that is assessed and the basis for the department's  
17 calculation of the fee. This notice must be issued at least  
18 30 days prior to the due date for payment of the assessment.

19 (7) A holder of or an applicant for a permit,  
20 certificate, or license may appeal the department's fee  
21 assessment to the board within 20 days after receiving  
22 written notice of the department's fee determination under  
23 subsection (6). The appeal to the board must include a  
24 written statement detailing the reasons that the  
25 permitholder or applicant considers the department's fee

1 assessment to be erroneous or excessive.

2 (8) If part of the department's fee assessment is not  
3 in dispute in an appeal filed under subsection (7), the  
4 undisputed portion of the fee must be paid to the department  
5 upon written request of the department.

6 (9) The contested case provisions of the Montana  
7 Administrative Procedure Act, provided for in Title 2,  
8 chapter 4, part 6, apply to a hearing before the board under  
9 this section.

10 NEW SECTION. Section 2. Deposition of water quality  
11 permit fees. (1) There must be credited to an account in the  
12 state special revenue fund:

13 (a) all legislative and federal appropriations to the  
14 department for administration of this chapter; and

15 (b) all fees collected under [section 1].

16 (2) Money in the account may be used only to pay the  
17 department's cost in implementing the functions described in  
18 [section 1(1)].

19 NEW SECTION. Section 3. Codification instruction.  
20 [Sections 1 and 2] are intended to be codified as an  
21 integral part of Title 75, chapter 5, part 5, and the  
22 provisions of Title 75, chapter 5, part 5, apply to  
23 [sections 1 and 2].

24 NEW SECTION. Section 4. Applicability. (1) [Section  
25 1(1)] applies to all applications or petitions filed on or

LC 0884/01

1 after October 1, 1993, and to all current and future holders  
2 of permits, licenses, or other authorizations described in  
3 [section 1(1)].

4 (2) The board of health and environmental sciences may  
5 commence rulemaking prior to October 1, 1993.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0388, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:** An act authorizing the Department of Health and Environmental Sciences to collect fees to offset Water Quality program costs for issuing permits and monitoring activity, requiring notice of the fee assessment, providing an appeal procedure and disposition of fees.

**ASSUMPTIONS:**

1. The program will be fully staffed in the first year with additional staff in the Support Services Bureau: 1.00 FTE grade 13 (\$33,371) and .50 FTE grade 11 (\$14,062) and operational costs of \$3,815 and \$4,096.
2. Exclusions from Montana Ground Water Pollution Control System permits will remain available for certain sources.
3. There will be no loss of existing resource indemnity ground water assessment revenues for ground water program.
4. Federal funds will be used for water pollution control activities and municipal wastewater assistance program.
5. If this bill passes the DHES will need appropriations of \$928,399 in FY94 and \$930,177 in FY95.

**FISCAL IMPACT:**

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<b>Expenditures:</b>						
FTE	0	9.50	9.50	0	9.50	9.50
Personal Services	0	472,728	472,728	0	475,061	475,061
Operating	0	455,671	455,671	0	455,116	455,116
Total	0	928,399	928,399	0	930,177	930,177

**Funding:**

Fees	0	877,151	877,151	0	878,648	878,648
Proprietary Fund	0	51,248	51,248	0	51,529	51,529

**Revenues:**

Fees	0	877,151	877,151	0	878,648	878,648
Proprietary Fund	0	51,248	51,248	0	51,529	51,529

**LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:**

Fees paid by permit applicants will provide support to implement the water quality permit program.

**TECHNICAL NOTES:**

Section 2(a) does not comply with the treasury fund structure.

*David Lewis* 2 2.93  
 DAVID LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

2 4 13  
 BOB RANEY, PRIMARY SPONSOR DATE

Fiscal Note for HB0388, as introduced

48 388



## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Revised Fiscal Note for HB0388, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing the Department of Health and Environmental Sciences to collect fees to offset Water Quality program costs for issuing permits and monitoring activity requiring the Department to provide notice of the fee assessment; providing an appeal procedure for resolution of fee disputes; providing for the disposition of fees; and providing an applicability date.

ASSUMPTIONS:

1. Program will be fully staffed in the first year.
2. Exclusions from Montana Ground Water Pollution Control System permits will remain available for certain sources.
3. No loss of existing RIT for ground water program.
4. Federal funds will be used for water pollution control activities and municipal wastewater assistance program.
5. Additional support staff will be needed in the Support Services Bureau. 1.00 FTE grade 13 (\$33,371) and .50 FTE grade 11 (\$14,062) and operational costs of \$3,815 and \$4,096.
6. If this bill passes the Department of Health and Environmental Sciences will need appropriations of \$928,399 in FY94 and \$930,177 in FY95.
7. At the end of the legislative session DHES will have to determine if any additional staffing in the Support Services Bureau is needed to cover all of the bills that passed during the session.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	0	8.00	8.00	0	8.00	8.00
Personal Services	0	425,616	425,616	0	427,936	427,936
Operating	0	395,524	395,524	0	400,981	400,981
Total	0	821,140	821,140	0	828,917	828,917

Expenditures:

Fees	0	769,892	769,892	0	777,388	777,388
Proprietary Fund	0	51,248	51,248	0	51,529	51,529

Revenues:

Fees	0	769,892	769,892	0	777,388	777,388
Proprietary Fund	0	51,248	51,248	0	51,529	51,529

*Dave Lewis* 2-9-93

DAVE LEWIS, BUDGET DIRECTOR  
Office of Budget and Program Planning

DATE

BOB RANEY, PRIMARY SPONSOR

DATE

Revised Fiscal Note for HB0388, as introduced

*HB388 #2*

Fiscal Note Request HB0388, as introduced  
Form BD-15 page 2  
(continued)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: Fees paid by permit applicants will provide support to implement the water quality permit program.

EFFECT ON COUNTY OR OTHER LOCAL GOVERNMENT ENTITIES:

Local governments will have to pay permit fees if they have facilities that discharge pollutants to state waters. An estimate of statewide costs would be \$250,000 per year.

TECHNICAL NOTES:

Section 2.(a) each of these appropriations must be in their own funds(ex. 01100, General Fund, 03000, Federal Funds, 06000 Proprietary Fund) with their own appropriation numbers.

HB 388 #2

APPROVED BY COMMITTEE  
ON TAXATION

## HOUSE BILL NO. 388

INTRODUCED BY GILBERT, WANZENRIED, TOOLE, HARPER, WATERMAN  
BY REQUEST OF THE DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT  
FEES TO OFFSET WATER QUALITY PROGRAM COSTS FOR ISSUING  
PERMITS AND MONITORING ACTIVITY; REQUIRING THE DEPARTMENT TO  
PROVIDE NOTICE OF THE FEE ASSESSMENT; PROVIDING AN APPEAL  
PROCEDURE FOR RESOLUTION OF FEE DISPUTES; PROVIDING FOR THE  
DISPOSITION OF FEES; AMENDING SECTION 69-7-111, MCA; AND  
PROVIDING AN APPLICABILITY DATE."

WHEREAS, section 402 of the Federal Water Pollution  
Control Act provides that states may be authorized by the  
U.S. Environmental Protection Agency to administer the  
national pollutant discharge elimination system wastewater  
discharge permit program; and

WHEREAS, the Montana Department of Health and  
Environmental Sciences administers all water quality permit  
programs in Montana through an agreement with the U.S.  
Environmental Protection Agency under section 402 of the  
Federal Water Pollution Control Act; and

WHEREAS, the Department of Health and Environmental

Sciences' water quality permit programs are inextricably  
linked to its other water pollution control and ambient  
water quality monitoring programs; and

WHEREAS, both the citizens and businesses of the State  
of Montana benefit from implementation of these programs by  
the Department of Health and Environmental Sciences; and

WHEREAS, federal grants for Montana's water quality  
programs are currently inadequate and are being further  
reduced, and Montana's general fund is stressed by competing  
government programs; and

WHEREAS, if the Department of Health and Environmental  
Sciences fails to obtain authorization, the national  
pollutant discharge elimination system program will be  
administered within Montana by the U.S. Environmental  
Protection Agency; and

WHEREAS, the persons who discharge or may discharge  
wastes to Montana's water resources and who are required to  
obtain a water quality permit should pay a fair share to  
ensure protection of Montana's water resources; and

WHEREAS, the annual fee system may be an incentive to  
the regulated community to design activities that reduce the  
amount of pollutants discharged to state waters or otherwise  
lower the potential for harm to state waters.

THEREFORE, the Legislature of the State of Montana finds  
that it is appropriate to authorize the development of

1 permit fee systems to support Montana's comprehensive water  
2 pollution control program.

#### 4 STATEMENT OF INTENT

5 A statement of intent is required for this bill because  
6 it authorizes the board of health and environmental sciences  
7 to adopt rules regarding fees to be assessed to applicants  
8 for or holders of certain permits or licenses. The intent of  
9 this bill is to allow the department of health and  
10 environmental sciences to charge for its services in  
11 administering its comprehensive water permitting program.  
12 These services include both the permitting function and  
13 followup monitoring and enforcement programs to ensure that  
14 activities are complying with the terms and conditions of  
15 the permit. In addition, the legislature anticipates that  
16 fees will be assessed to applicants or permittees under  
17 other statutory authorities for which an exclusion from a  
18 water quality permit requirement is provided by rule.

19 The board shall attempt to develop a structured fee  
20 system that can be clearly applied to all activities  
21 addressed under this bill and that results in revenue that  
22 approximates the department's documented cost of  
23 implementing its comprehensive water quality permit program.  
24 The permit review fee system must be based on an average  
25 assessment of the department's direct and indirect cost of

1 reviewing permit applications, including the cost of support  
2 services, inservice training, and correspondence. The annual  
3 fee system may involve fees that are prescribed by category  
4 according to the criteria in {section 1(2)(b)}.

5 THE BOARD SHALL CONSIDER THE FOLLOWING FEE STRUCTURES AS  
6 PRIMA FACIE INDICATORS OF APPROPRIATE FEE ASSESSMENTS,  
7 EXCEPT THAT THE FEES SHOULD BE INCREASED EVERY 3 YEARS AFTER  
8 OCTOBER 1, 1993, BY THE PERCENTAGE, IF ANY, BY WHICH THE  
9 PRODUCER PRICE INDEX, PUBLISHED BY THE UNITED STATES BUREAU  
10 OF LABOR STATISTICS FOR THE MOST RECENT CALENDAR YEAR,  
11 EXCEEDS THE PRODUCER PRICE INDEX FOR CALENDAR YEAR 1993.

	<u>APPLICATION FEE</u>	<u>ANNUAL FEE</u>
<u>PUBLICLY OWNED</u>		
<u>TREATMENT WORKS</u>	<u>\$250 -- \$1,000</u>	<u>\$250 -- \$2,500</u>
<u>INDUSTRIAL STORM AND</u>		
<u>GROUND WATER SYSTEMS</u>	<u>\$1,000</u>	<u>\$1,000 -- \$2,500</u>
<u>INDUSTRIAL COOLING</u>		
<u>WATER SYSTEMS</u>	<u>\$500</u>	<u>\$200 -- \$500</u>
<u>INDUSTRIAL SYSTEMS</u>		
<u>WITH</u>		
<u>WITH TOXIC SUBSTANCES</u>	<u>\$2,500 -- \$5,000</u>	<u>\$2,500</u>
<u>GENERAL PERMITS</u>	<u>\$200 -- \$500</u>	<u>\$250 -- \$2,500</u>
<u>NONDEGRADATION</u>		
<u>REVIEW:</u>		

1       (1) DOMESTIC       \$2,500  
 2       SEWAGE TREATMENT  
 3       (2) INDUSTRIAL     \$2,500 -- \$5,000  
 4       (3) SUBDIVISION   \$120 -- \$200 PER  
 5                         LOT  
 6       THE ANNUAL FEE IS TO BE ASSESSED FOR EACH MILLION  
 7       GALLONS OF WASTE DISCHARGED PER DAY ON A YEARLY AVERAGE AND  
 8       IS SPECIFIC TO EACH DISCHARGE AT A FACILITY. THE LOWER  
 9       VALUES ARE MINIMUM FEES, REGARDLESS OF THE AMOUNT OF WASTE  
 10       DISCHARGED. FOR EITHER THE APPLICATION FEE OR ANNUAL FEE FOR  
 11       STORM WATER DISCHARGES, A FACILITY MAY NOT BE CHARGED FOR  
 12       MORE THAN THE FIVE STORM WATER DISCHARGE POINTS THAT YIELD  
 13       THE HIGHEST FEES.  
 14       THE LEGISLATURE ALSO INTENDS THAT A FACILITY THAT  
 15       CONSISTENTLY DISCHARGES EFFLUENT AT LESS THAN OR EQUAL TO  
 16       ONE-HALF OF ITS PERMIT LIMIT CONCENTRATION, USING THE  
 17       PREVIOUS YEAR'S DISCHARGE DATA, IS ENTITLED TO A 25% FEE  
 18       REDUCTION IN ITS ANNUAL FEE. FURTHER, ANY FACILITY THAT  
 19       CONSISTENTLY DISCHARGES EFFLUENT AT LEVELS BETWEEN 50% AND  
 20       100% OF ITS PERMIT LIMIT CONCENTRATION IS ENTITLED TO A  
 21       PROPORTIONATE FEE REDUCTION OF UP TO 25%. FOR A PERMIT WITH  
 22       MULTIPLE PARAMETER LIMITS, THE ANNUAL AVERAGE OF THE  
 23       PERCENTAGE OF USE OF EACH PARAMETER LIMIT SHOULD BE USED TO  
 24       DETERMINE AN OVERALL PERCENTAGE. A NEW PERMITTEE IS NOT  
 25       ELIGIBLE FOR FEE REDUCTION IN ITS FIRST YEAR OF OPERATION,

1       AND DILUTION IS NOT INTENDED AS A MEANS TO JUSTIFY LOWER  
 2       ANNUAL FEES.

3       Further, the board's rules should provide a mechanism  
 4       for coordinating collection of fees for the review and  
 5       monitoring of projects and activities authorized by [section  
 6       1] with any other fees that are collected by other state  
 7       agencies for the review and monitoring of those projects and  
 8       activities. The fees collected by the department may not  
 9       duplicate the fees collected by another state agency for  
 10       services in reviewing permit, certificate, and license  
 11       applications and in conducting monitoring.

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

14       NEW SECTION. Section 1. Fees authorized for recovery  
 15       -- process -- rulemaking. (1) The board shall by rule  
 16       prescribe fees to be assessed by the department that are  
 17       sufficient to cover the board's and department's documented  
 18       costs, both direct and indirect, of:

19       (a) reviewing and acting upon an application for a  
 20       permit, permit modification, permit renewal, certificate,  
 21       license, or other authorization required by rule under  
 22       75-5-201 or 75-5-401;

23       (b) reviewing and acting upon a petition for a  
 24       degradation allowance under 75-5-303;

25       (c) reviewing and acting upon an application for a

1 permit, certificate, license, or other authorization for  
2 which an exclusion is provided by rule from the permitting  
3 requirements established under 75-5-401;

4 (d) enforcing the terms and conditions of a permit or  
5 authorization identified in subsections (1)(a) through  
6 (1)(c). If the permit or authorization is not issued, the  
7 department shall return this portion of any application fee  
8 to the applicant.

9 (e) conducting compliance inspections and monitoring  
10 effluent and ambient water quality; AND

11 ~~{f}--conducting--modeling,--analyses,--and--demonstrations~~  
12 ~~in--areas--that--include--but--are--not---limited---to---the~~  
13 ~~determination--of--total--maximum-daily-loads-and-waste-load~~  
14 ~~allocation;~~

15 ~~{g}--identifying-and-monitoring-impaired-waters;~~

16 ~~{h}--preparing-and---maintaining---public---information~~  
17 ~~systems--on-effluent-limitation, discharges, compliance, and~~  
18 ~~ambient-water-quality;~~

19 ~~{i}--providing--water--quality--training--and--education~~  
20 ~~programs-for-the-department-or-public, and~~

21 ~~{j}{F}~~ preparing water quality rules or guidance  
22 documents.

23 (2) The rules promulgated by the board under this  
24 section must include:

25 (a) a fee on all applications for permits or

1 authorizations, as identified in subsections (1)(a) through  
2 (1)(c), that ~~is-sufficient-to-cover~~ RECOVERS TO THE EXTENT  
3 PERMITTED BY THIS SUBSECTION (2) the department's cost of  
4 reviewing and acting upon the applications; ~~and.~~ THIS FEE  
5 MAY NOT BE LESS THAN \$250 OR MORE THAN \$5,000 PER DISCHARGE  
6 POINT FOR AN APPLICATION ADDRESSED UNDER SUBSECTION (1),  
7 EXCEPT THAT AN APPLICATION WITH MULTIPLE STORM WATER  
8 DISCHARGE POINTS MAY BE ASSESSED A LOWER FEE FOR THOSE  
9 POINTS ACCORDING TO BOARD RULE.

10 (b) an annual fee to be assessed according to the  
11 ~~potential-for-harm-to-state-waters-by-the-activity-under~~  
12 ~~permit-or-authorization;--The--annual--fee--must-take-into~~  
13 ~~consideration--the volume and concentration of waste~~  
14 ~~discharged into state waters or-the-volume-and-concentration~~  
15 ~~of--process--materials-or-wastes-placed-in-an-impoundment-or~~  
16 ~~other---containment---facility---subject---to---the---permit~~  
17 ~~requirements-of-this-chapter.~~ The annual fee MAY NOT BE LESS  
18 THAN \$250 AND MAY NOT BE MORE THAN \$3,000 PER MILLION  
19 GALLONS DISCHARGED PER DAY ON AN ANNUAL AVERAGE FOR ANY  
20 ACTIVITY UNDER PERMIT OR AUTHORIZATION, AS DESCRIBED IN  
21 SUBSECTION (1), EXCEPT THAT A PERMIT OR AUTHORIZATION WITH  
22 MULTIPLE STORM WATER DISCHARGE POINTS MAY BE ASSESSED A  
23 LOWER FEE FOR THOSE POINTS ACCORDING TO BOARD RULE. TO THE  
24 EXTENT PERMITTED UNDER THIS LIMITATION, THE ANNUAL FEE must  
25 be sufficient to pay the department's estimated cost of

conducting all tasks described under subsection (1) after subtracting:

- (i) the fees collected under subsection (2)(a);
- (ii) state general fund appropriations for functions administered under this chapter; and
- (iii) federal grants for functions administered under this chapter.

(3) For purposes of subsection (2), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality DISCHARGE PERMIT programs.

(4) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section ~~in--a--timely--manner~~ WITHIN 90 DAYS AFTER THE DATE ESTABLISHED BY RULE FOR FEE PAYMENT, the department may:

- (a) impose an additional assessment consisting of not more than ~~50%~~ 20% of the fee plus interest on the required fee computed at the rate established under 15-31-510(3); or
- (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (4)(a).

(5) Fees collected pursuant to this section must be

deposited in an account in the state special revenue fund TYPE pursuant to [section 2].

(6) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(7) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection (6). The appeal to the board must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

(8) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (7), the undisputed portion of the fee must be paid to the department upon written request of the department.

(9) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(10) A MUNICIPALITY MAY RAISE RATES TO COVER COSTS ASSOCIATED WITH THE FEES PRESCRIBED IN THIS SECTION FOR A

1 PUBLIC SEWER SYSTEM WITHOUT THE HEARING REQUIRED IN  
2 69-7-111.

3 NEW SECTION. Section 2. Deposition of water quality  
4 permit fees. (1) There ALL FEES COLLECTED UNDER [SECTION 1]  
5 must be credited to an account in the state special revenue  
6 fund-

7 (a)--all-legislative-and-federal-appropriations--to--the  
8 department-for-administration-of-this-chapter--and

9 (b)--all-fees-collected-under-[section-1].

10 (2) Money in the account may be used only to pay the  
11 department's cost in implementing the functions described in  
12 [section 1(1)].

13 SECTION 3. SECTION 69-7-111, MCA, IS AMENDED TO READ:

14 "69-7-111. Municipal rate hearing required -- notice.

15 (1) Except as provided in [section 1] and 75-6-108, if the  
16 governing body of a municipality considers it advisable to  
17 regulate, establish, or change rates, charges, or  
18 classifications imposed on its customers, it shall order a  
19 hearing to be held before it at a time and place specified.

20 (2) Notice of the hearing shall be published in a  
21 newspaper as provided in 7-1-4127.

22 (3) (a) The notice shall be published three times with  
23 at least 6 days separating each publication. The first  
24 publication may be no more than 28 days prior to the  
25 hearing, and the last publication may be no less than 3 days

1 prior to the hearing.

2 (b) The notice must also be mailed at least 7 days and  
3 not more than 30 days prior to the hearing to persons served  
4 by the utility. The notice must be mailed within the  
5 prescribed time period. This notice must contain an estimate  
6 of the amount the customer's average bill will increase.

7 (4) The published notice must contain:

8 (a) the date, time, and place of the hearing;

9 (b) a brief statement of the proposed action; and

10 (c) the address and telephone number of a person who  
11 may be contacted for further information regarding the  
12 hearing.

13 (5) Notice of all hearings shall be mailed first class,  
14 postage prepaid, to the Montana consumer counsel."

15 NEW SECTION. Section 4. Codification instruction.  
16 [Sections 1 and 2] are intended to be codified as an  
17 integral part of Title 75, chapter 5, part 5, and the  
18 provisions of Title 75, chapter 5, part 5, apply to  
19 [sections 1 and 2].

20 NEW SECTION. Section 5. Applicability. (1) [Section  
21 1(1)] applies to all applications or petitions filed on or  
22 after October 1, 1993, and to all current and future holders  
23 of permits, licenses, or other authorizations described in  
24 [section 1(1)].

25 (2) The board of health and environmental sciences may



HB 0388/02

1 commence rulemaking prior to October 1, 1993.

-End-

## 1 HOUSE BILL NO. 388

2 INTRODUCED BY GILBERT, WANZENRIED, TOOLE, HARPER, WATERMAN  
3 BY REQUEST OF THE DEPARTMENT  
4 OF HEALTH AND ENVIRONMENTAL SCIENCES  
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE  
7 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT  
8 FEES TO OFFSET WATER QUALITY PROGRAM COSTS FOR ISSUING  
9 PERMITS AND MONITORING ACTIVITY; REQUIRING THE DEPARTMENT TO  
10 PROVIDE NOTICE OF THE FEE ASSESSMENT; PROVIDING AN APPEAL  
11 PROCEDURE FOR RESOLUTION OF FEE DISPUTES; PROVIDING FOR THE  
12 DISPOSITION OF FEES; AMENDING SECTION 69-7-111, MCA; AND  
13 PROVIDING AN APPLICABILITY DATE."  
14

15 WHEREAS, section 402 of the Federal Water Pollution  
16 Control Act provides that states may be authorized by the  
17 U.S. Environmental Protection Agency to administer the  
18 national pollutant discharge elimination system wastewater  
19 discharge permit program; and

20 WHEREAS, the Montana Department of Health and  
21 Environmental Sciences administers all water quality permit  
22 programs in Montana through an agreement with the U.S.  
23 Environmental Protection Agency under section 402 of the  
24 Federal Water Pollution Control Act; and

25 WHEREAS, the Department of Health and Environmental

1 Sciences' water quality permit programs are inextricably  
2 linked to its other water pollution control and ambient  
3 water quality monitoring programs; and

4 WHEREAS, both the citizens and businesses of the State  
5 of Montana benefit from implementation of these programs by  
6 the Department of Health and Environmental Sciences; and

7 WHEREAS, federal grants for Montana's water quality  
8 programs are currently inadequate and are being further  
9 reduced, and Montana's general fund is stressed by competing  
10 government programs; and

11 WHEREAS, if the Department of Health and Environmental  
12 Sciences fails to obtain authorization, the national  
13 pollutant discharge elimination system program will be  
14 administered within Montana by the U.S. Environmental  
15 Protection Agency; and

16 WHEREAS, the persons who discharge or may discharge  
17 wastes to Montana's water resources and who are required to  
18 obtain a water quality permit should pay a fair share to  
19 ensure protection of Montana's water resources; and

20 WHEREAS, the annual fee system may be an incentive to  
21 the regulated community to design activities that reduce the  
22 amount of pollutants discharged to state waters or otherwise  
23 lower the potential for harm to state waters.

24 THEREFORE, the Legislature of the State of Montana finds  
25 that it is appropriate to authorize the development of

1 permit fee systems to support Montana's comprehensive water  
2 pollution control program.

#### 3 STATEMENT OF INTENT

5 A statement of intent is required for this bill because  
6 it authorizes the board of health and environmental sciences  
7 to adopt rules regarding fees to be assessed to applicants  
8 for or holders of certain permits or licenses. The intent of  
9 this bill is to allow the department of health and  
10 environmental sciences to charge for its services in  
11 administering its comprehensive water permitting program.  
12 These services include both the permitting function and  
13 followup monitoring and enforcement programs to ensure that  
14 activities are complying with the terms and conditions of  
15 the permit. In addition, the legislature anticipates that  
16 fees will be assessed to applicants or permittees under  
17 other statutory authorities for which an exclusion from a  
18 water quality permit requirement is provided by rule.

19 The board shall attempt to develop a structured fee  
20 system that can be clearly applied to all activities  
21 addressed under this bill and that results in revenue that  
22 approximates the department's documented cost of  
23 implementing its comprehensive water quality permit program.  
24 The permit review fee system must be based on an average  
25 assessment of the department's direct and indirect cost of

1 reviewing permit applications, including the cost of support  
2 services, inservice training, and correspondence. The annual  
3 fee system may involve fees that are prescribed by category  
4 according to the criteria in [section 1(2)(b)].

5 THE BOARD SHALL CONSIDER THE FOLLOWING FEE STRUCTURES AS  
6 PRIMA FACIE INDICATORS OF APPROPRIATE FEE ASSESSMENTS,  
7 EXCEPT THAT THE FEES SHOULD BE INCREASED EVERY 3 YEARS AFTER  
8 OCTOBER 1, 1993, BY THE PERCENTAGE, IF ANY, BY WHICH THE  
9 PRODUCER PRICE INDEX, PUBLISHED BY THE UNITED STATES BUREAU  
10 OF LABOR STATISTICS FOR THE MOST RECENT CALENDAR YEAR,  
11 EXCEEDS THE PRODUCER PRICE INDEX FOR CALENDAR YEAR 1993.

	<u>APPLICATION FEE</u>	<u>ANNUAL FEE</u>
<u>PUBLICLY OWNED</u>		
<u>TREATMENT WORKS</u>	<u>\$250 -- \$1,000</u>	<u>\$250 -- \$2,500</u>
<u>INDUSTRIAL STORM AND</u>		
<u>GROUND WATER SYSTEMS</u>	<u>\$1,000</u>	<u>\$1,000 -- \$2,500</u>
<u>INDUSTRIAL COOLING</u>		
<u>WATER SYSTEMS</u>	<u>\$500</u>	<u>\$200 -- \$500</u>
<u>INDUSTRIAL SYSTEMS</u>		
<u>WITH</u>		
<u>WITH TOXIC SUBSTANCES</u>	<u>\$2,500 -- \$5,000</u>	<u>\$2,500</u>
<u>GENERAL PERMITS</u>	<u>\$200 -- \$500</u>	<u>\$250 -- \$2,500</u>
<u>NONDEGRADATION</u>		
<u>REVIEW:</u>		

1       (1) DOMESTIC       \$2,500  
 2       SEWAGE TREATMENT  
 3       (2) INDUSTRIAL     \$2,500 -- \$5,000  
 4       (3) SUBDIVISION   \$120 -- \$200 PER  
 5                         LOT  
 6       THE ANNUAL FEE IS TO BE ASSESSED FOR EACH MILLION  
 7       GALLONS OF WASTE DISCHARGED PER DAY ON A YEARLY AVERAGE AND  
 8       IS SPECIFIC TO EACH DISCHARGE AT A FACILITY. THE LOWER  
 9       VALUES ARE MINIMUM FEES, REGARDLESS OF THE AMOUNT OF WASTE  
 10       DISCHARGED. FOR EITHER THE APPLICATION FEE OR ANNUAL FEE FOR  
 11       STORM WATER DISCHARGES, A FACILITY MAY NOT BE CHARGED FOR  
 12       MORE THAN THE FIVE STORM WATER DISCHARGE POINTS THAT YIELD  
 13       THE HIGHEST FEES.  
 14       THE LEGISLATURE ALSO INTENDS THAT A FACILITY THAT  
 15       CONSISTENTLY DISCHARGES EFFLUENT AT LESS THAN OR EQUAL TO  
 16       ONE-HALF OF ITS PERMIT LIMIT CONCENTRATION, USING THE  
 17       PREVIOUS YEAR'S DISCHARGE DATA, IS ENTITLED TO A 25% FEE  
 18       REDUCTION IN ITS ANNUAL FEE. FURTHER, ANY FACILITY THAT  
 19       CONSISTENTLY DISCHARGES EFFLUENT AT LEVELS BETWEEN 50% AND  
 20       100% OF ITS PERMIT LIMIT CONCENTRATION IS ENTITLED TO A  
 21       PROPORTIONATE FEE REDUCTION OF UP TO 25%. FOR A PERMIT WITH  
 22       MULTIPLE PARAMETER LIMITS, THE ANNUAL AVERAGE OF THE  
 23       PERCENTAGE OF USE OF EACH PARAMETER LIMIT SHOULD BE USED TO  
 24       DETERMINE AN OVERALL PERCENTAGE. A NEW PERMITTEE IS NOT  
 25       ELIGIBLE FOR FEE REDUCTION IN ITS FIRST YEAR OF OPERATION,

1       AND DILUTION IS NOT INTENDED AS A MEANS TO JUSTIFY LOWER  
 2       ANNUAL FEES.

3       Further, the board's rules should provide a mechanism  
 4       for coordinating collection of fees for the review and  
 5       monitoring of projects and activities authorized by [section  
 6       1] with any other fees that are collected by other state  
 7       agencies for the review and monitoring of those projects and  
 8       activities. The fees collected by the department may not  
 9       duplicate the fees collected by another state agency for  
 10       services in reviewing permit, certificate, and license  
 11       applications and in conducting monitoring.

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

14       NEW SECTION. Section 1. Fees authorized for recovery  
 15       -- process -- rulemaking. (1) The board shall by rule  
 16       prescribe fees to be assessed by the department that are  
 17       sufficient to cover the board's and department's documented  
 18       costs, both direct and indirect, of:

19       (a) reviewing and acting upon an application for a  
 20       permit, permit modification, permit renewal, certificate,  
 21       license, or other authorization required by rule under  
 22       75-5-201 or 75-5-401;

23       (b) reviewing and acting upon a petition for a  
 24       degradation allowance under 75-5-303;

25       (c) reviewing and acting upon an application for a

1 permit, certificate, license, or other authorization for  
2 which an exclusion is provided by rule from the permitting  
3 requirements established under 75-5-401;

4 (d) enforcing the terms and conditions of a permit or  
5 authorization identified in subsections (1)(a) through  
6 (1)(c). If the permit or authorization is not issued, the  
7 department shall return this portion of any application fee  
8 to the applicant.

9 (e) conducting compliance inspections and monitoring  
10 effluent and ambient water quality; AND

11 ~~{f}--conducting--modeling--analyses--and--demonstrations~~  
12 ~~in--areas--that--include--but--are--not---limited---to---the~~  
13 ~~determination--of--total--maximum-daily-loads-and-waste-load~~  
14 ~~allocation;~~

15 ~~{g}--identifying-and-monitoring-impaired-waters;~~

16 ~~{h}--preparing--and---maintaining---public---information~~  
17 ~~systems--on-effluent-limitation--discharges--compliance--and~~  
18 ~~ambient-water-quality;~~

19 ~~{i}--providing--water--quality--training--and--education~~  
20 ~~programs-for-the-department-or-public--and~~

21 ~~{j}{F}~~ preparing water quality rules or guidance  
22 documents.

23 (2) The rules promulgated by the board under this  
24 section must include:

25 (a) a fee on all applications for permits or

1 authorizations, as identified in subsections (1)(a) through  
2 (1)(c), ~~that is sufficient to cover~~ RECOVERS TO THE EXTENT  
3 PERMITTED BY THIS SUBSECTION (2) the department's cost of  
4 reviewing and acting upon the applications;--and, THIS FEE  
5 MAY NOT BE LESS THAN \$250 OR MORE THAN \$5,000 PER DISCHARGE  
6 POINT FOR AN APPLICATION ADDRESSED UNDER SUBSECTION (1),  
7 EXCEPT THAT AN APPLICATION WITH MULTIPLE STORM WATER  
8 DISCHARGE POINTS MAY BE ASSESSED A LOWER FEE FOR THOSE  
9 POINTS ACCORDING TO BOARD RULE.

10 (b) an annual fee to be assessed according to the  
11 ~~potential-for-harm-to-state-waters--by--the--activity--under~~  
12 ~~permit--or--authorization--The--annual--fee--must--take--into~~  
13 ~~consideration--the volume and concentration of waste~~  
14 ~~discharged into state waters or--the--volume--and--concentration~~  
15 ~~of--process--materials--or--wastes--placed--in--an--impoundment--or~~  
16 ~~other---containment---facility---subject---to---the---permit~~  
17 ~~requirements--of--this--chapter. The annual fee MAY NOT BE LESS~~  
18 ~~THAN \$250 AND MAY NOT BE MORE THAN \$3,000 PER MILLION~~  
19 ~~GALLONS DISCHARGED PER DAY ON AN ANNUAL AVERAGE FOR ANY~~  
20 ~~ACTIVITY UNDER PERMIT OR AUTHORIZATION, AS DESCRIBED IN~~  
21 ~~SUBSECTION (1), EXCEPT THAT A PERMIT OR AUTHORIZATION WITH~~  
22 ~~MULTIPLE STORM WATER DISCHARGE POINTS MAY BE ASSESSED A~~  
23 ~~LOWER FEE FOR THOSE POINTS ACCORDING TO BOARD RULE. TO THE~~  
24 ~~EXTENT PERMITTED UNDER THIS LIMITATION, THE ANNUAL FEE must~~  
25 be sufficient to pay the department's estimated cost of

conducting all tasks described under subsection (1) after subtracting:

- (i) the fees collected under subsection (2)(a);
- (ii) state general fund appropriations for functions administered under this chapter; and
- (iii) federal grants for functions administered under this chapter.

(3) For purposes of subsection (2), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality DISCHARGE PERMIT programs.

(4) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section ~~in-a-timely-manner~~ WITHIN 90 DAYS AFTER THE DATE ESTABLISHED BY RULE FOR FEE PAYMENT, the department may:

- (a) impose an additional assessment consisting of not more than ~~50%~~ 20% of the fee plus interest on the required fee computed at the rate established under 15-31-510(3); or
- (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (4)(a).

(5) Fees collected pursuant to this section must be

deposited in an account in the state special revenue fund TYPE pursuant to [section 2].

(6) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(7) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection (6). The appeal to the board must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

(8) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (7), the undisputed portion of the fee must be paid to the department upon written request of the department.

(9) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(10) A MUNICIPALITY MAY RAISE RATES TO COVER COSTS ASSOCIATED WITH THE FEES PRESCRIBED IN THIS SECTION FOR A

PUBLIC SEWER SYSTEM WITHOUT THE HEARING REQUIRED IN  
69-7-111.

**NEW SECTION. Section 2.** Deposition of water quality permit fees. (1) There ALL FEES COLLECTED UNDER [SECTION 1] must be credited to an account in the state special revenue fund-

~~{a}--all-legislative-and-federal-appropriations--to--the  
department-for-administration-of-this-chapter;--and~~

~~{b}--all-fees-collected-under-{section-1}.~~

(2) Money in the account may be used only to pay the department's cost in implementing the functions described in [section 1(1)].

**SECTION 3. SECTION 69-7-111, MCA, IS AMENDED TO READ:**

**"69-7-111. Municipal rate hearing required -- notice.**

(1) Except as provided in [section 1] and 75-6-108, if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days

prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel."

**NEW SECTION. Section 4. Codification instruction.**

[Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 5, part 5, and the provisions of Title 75, chapter 5, part 5, apply to [sections 1 and 2].

**NEW SECTION. Section 5. Applicability.** (1) [Section

1(1)] applies to all applications or petitions filed on or after October 1, 1993, and to all current and future holders of permits, licenses, or other authorizations described in [section 1(1)].

(2) The board of health and environmental sciences may

HB 0388/03

1 commence rulemaking prior to October 1, 1993.

-End-



## HOUSE BILL NO. 388

INTRODUCED BY GILBERT, WANZENRIED, TOOLE, HARPER, WATERMAN  
BY REQUEST OF THE DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT  
FEES TO OFFSET WATER QUALITY PROGRAM COSTS FOR ISSUING  
PERMITS AND MONITORING ACTIVITY; REQUIRING THE DEPARTMENT TO  
PROVIDE NOTICE OF THE FEE ASSESSMENT; PROVIDING AN APPEAL  
PROCEDURE FOR RESOLUTION OF FEE DISPUTES; PROVIDING FOR THE  
DISPOSITION OF FEES; AMENDING SECTION 69-7-111, MCA; AND  
PROVIDING AN APPLICABILITY DATE."

WHEREAS, section 402 of the Federal Water Pollution  
Control Act provides that states may be authorized by the  
U.S. Environmental Protection Agency to administer the  
national pollutant discharge elimination system wastewater  
discharge permit program; and

WHEREAS, the Montana Department of Health and  
Environmental Sciences administers all water quality permit  
programs in Montana through an agreement with the U.S.  
Environmental Protection Agency under section 402 of the  
Federal Water Pollution Control Act; and

WHEREAS, the Department of Health and Environmental

Sciences' water quality permit programs are inextricably  
linked to its other water pollution control and ambient  
water quality monitoring programs; and

WHEREAS, both the citizens and businesses of the State  
of Montana benefit from implementation of these programs by  
the Department of Health and Environmental Sciences; and

WHEREAS, federal grants for Montana's water quality  
programs are currently inadequate and are being further  
reduced, and Montana's general fund is stressed by competing  
government programs; and

WHEREAS, if the Department of Health and Environmental  
Sciences fails to obtain authorization, the national  
pollutant discharge elimination system program will be  
administered within Montana by the U.S. Environmental  
Protection Agency; and

WHEREAS, the persons who discharge or may discharge  
wastes to Montana's water resources and who are required to  
obtain a water quality permit should pay a fair share to  
ensure protection of Montana's water resources; and

WHEREAS, the annual fee system may be an incentive to  
the regulated community to design activities that reduce the  
amount of pollutants discharged to state waters or otherwise  
lower the potential for harm to state waters.

THEREFORE, the Legislature of the State of Montana finds  
that it is appropriate to authorize the development of

1 permit fee systems to support Montana's comprehensive water  
2 pollution control program.

#### 3 STATEMENT OF INTENT

5 A statement of intent is required for this bill because  
6 it authorizes the board of health and environmental sciences  
7 to adopt rules regarding fees to be assessed to applicants  
8 for or holders of certain permits or licenses. The intent of  
9 this bill is to allow the department of health and  
10 environmental sciences to charge for its services in  
11 administering its comprehensive water permitting program.  
12 These services include both the permitting function and  
13 followup monitoring and enforcement programs to ensure that  
14 activities are complying with the terms and conditions of  
15 the permit. In addition, the legislature anticipates that  
16 fees will be assessed to applicants or permittees under  
17 other statutory authorities for which an exclusion from a  
18 water quality permit requirement is provided by rule.

19 The board shall attempt to develop a structured fee  
20 system that can be clearly applied to all activities  
21 addressed under this bill and that results in revenue that  
22 approximates the department's documented cost of  
23 implementing its comprehensive water quality permit program.  
24 The permit review fee system must be based on an average  
25 assessment of the department's direct and indirect cost of

1 reviewing permit applications, including the cost of support  
2 services, inservice training, and correspondence. The annual  
3 fee system may involve fees that are prescribed by category  
4 according to the criteria in [section 1(2)(b)].

5 THE BOARD SHALL CONSIDER THE FOLLOWING FEE STRUCTURES AS  
6 PRIMA FACIE INDICATORS OF APPROPRIATE FEE ASSESSMENTS,  
7 EXCEPT THAT THE FEES SHOULD BE INCREASED EVERY 3 YEARS AFTER  
8 OCTOBER 1, 1993, BY THE PERCENTAGE, IF ANY, BY WHICH THE  
9 PRODUCER-PRICE INDEX, PUBLISHED BY THE UNITED STATES BUREAU  
10 OF LABOR STATISTICS FOR THE MOST RECENT CALENDAR YEAR,  
11 EXCEEDS THE PRODUCER-PRICE INDEX FOR CALENDAR YEAR 1993.

	<u>APPLICATION FEE</u>	<u>ANNUAL FEE</u>
<u>PUBLICLY OWNED</u>		
<u>TREATMENT WORKS</u>	<u>\$250 -- \$1,000</u>	<u>\$250 -- \$2,500</u>
<u>INDUSTRIAL STORM AND</u>		
<u>GROUND WATER SYSTEMS</u>	<u>\$1,000</u>	<u>\$1,000 -- \$2,500</u>
<u>INDUSTRIAL COOLING</u>		
<u>WATER SYSTEMS</u>	<u>\$500</u>	<u>\$200 -- \$500</u>
<u>INDUSTRIAL SYSTEMS</u>		
<u>WITH</u>		
<u>WITH TOXIC SUBSTANCES</u>	<u>\$2,500 -- \$5,000</u>	<u>\$2,500</u>
<u>GENERAL PERMITS</u>	<u>\$200 -- \$500</u>	<u>\$250 -- \$2,500</u>
<u>NONDEGRADATION</u>		
<u>REVIEW:</u>		

1       (1) DOMESTIC       \$2,500  
 2       SEWAGE TREATMENT  
 3       (2) INDUSTRIAL     \$2,500 -- \$5,000  
 4       (3) SUBDIVISION   \$120 -- \$200 PER  
 5                         LOT  
 6       THE ANNUAL FEE IS TO BE ASSESSED FOR EACH MILLION  
 7       GALLONS OF WASTE DISCHARGED PER DAY ON A YEARLY AVERAGE AND  
 8       IS SPECIFIC TO EACH DISCHARGE AT A FACILITY. THE LOWER  
 9       VALUES ARE MINIMUM FEES, REGARDLESS OF THE AMOUNT OF WASTE  
 10       DISCHARGED. FOR EITHER THE APPLICATION FEE OR ANNUAL FEE FOR  
 11       STORM WATER DISCHARGES, A FACILITY MAY NOT BE CHARGED FOR  
 12       MORE THAN THE FIVE STORM WATER DISCHARGE POINTS THAT YIELD  
 13       THE HIGHEST FEES.  
 14       THE LEGISLATURE ALSO INTENDS THAT A FACILITY THAT  
 15       CONSISTENTLY DISCHARGES EFFLUENT AT LESS THAN OR EQUAL TO  
 16       ONE-HALF OF ITS PERMIT LIMIT CONCENTRATION, USING THE  
 17       PREVIOUS YEAR'S DISCHARGE DATA, IS ENTITLED TO A 25% FEE  
 18       REDUCTION IN ITS ANNUAL FEE. FURTHER, ANY FACILITY THAT  
 19       CONSISTENTLY DISCHARGES EFFLUENT AT LEVELS BETWEEN 50% AND  
 20       100% OF ITS PERMIT LIMIT CONCENTRATION IS ENTITLED TO A  
 21       PROPORTIONATE FEE REDUCTION OF UP TO 25%. FOR A PERMIT WITH  
 22       MULTIPLE PARAMETER LIMITS, THE ANNUAL AVERAGE OF THE  
 23       PERCENTAGE OF USE OF EACH PARAMETER LIMIT SHOULD BE USED TO  
 24       DETERMINE AN OVERALL PERCENTAGE. A NEW PERMITTEE IS NOT  
 25       ELIGIBLE FOR FEE REDUCTION IN ITS FIRST YEAR OF OPERATION,

1       AND DILUTION IS NOT INTENDED AS A MEANS TO JUSTIFY LOWER  
 2       ANNUAL FEES.

3       Further, the board's rules should provide a mechanism  
 4       for coordinating collection of fees for the review and  
 5       monitoring of projects and activities authorized by [section  
 6       1] with any other fees that are collected by other state  
 7       agencies for the review and monitoring of those projects and  
 8       activities. The fees collected by the department may not  
 9       duplicate the fees collected by another state agency for  
 10       services in reviewing permit, certificate, and license  
 11       applications and in conducting monitoring.

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

14       NEW SECTION. Section 1. Fees authorized for recovery  
 15       -- process -- rulemaking. (1) The board shall by rule  
 16       prescribe fees to be assessed by the department that are  
 17       sufficient to cover the board's and department's documented  
 18       costs, both direct and indirect, of:

19       (a) reviewing and acting upon an application for a  
 20       permit, permit modification, permit renewal, certificate,  
 21       license, or other authorization required by rule under  
 22       75-5-201 or 75-5-401;

23       (b) reviewing and acting upon a petition for a  
 24       degradation allowance under 75-5-303;

25       (c) reviewing and acting upon an application for a

1 permit, certificate, license, or other authorization for  
2 which an exclusion is provided by rule from the permitting  
3 requirements established under 75-5-401;

4 (d) enforcing the terms and conditions of a permit or  
5 authorization identified in subsections (1)(a) through  
6 (1)(c). If the permit or authorization is not issued, the  
7 department shall return this portion of any application fee  
8 to the applicant.

9 (e) conducting compliance inspections and monitoring  
10 effluent and ambient water quality; AND

11 ~~{f}--conducting--modeling--analyses--and--demonstrations~~  
12 ~~in--areas--that--include--but--are--not---limited---to---the~~  
13 ~~determination--of--total--maximum-daily-loads-and-waste-load~~  
14 ~~allocation;~~

15 ~~{g}--identifying-and-monitoring-impaired-waters;~~

16 ~~{h}--preparing--and---maintaining---public---information~~  
17 ~~systems--on-effluent-limitation--discharges--compliance--and~~  
18 ~~ambient-water-quality;~~

19 ~~{i}--providing--water--quality--training--and--education~~  
20 ~~programs-for-the-department-or-public--and~~

21 ~~{j}{F}~~ preparing water quality rules or guidance  
22 documents.

23 (2) The rules promulgated by the board under this  
24 section must include:

25 (a) a fee on all applications for permits or

1 authorizations, as identified in subsections (1)(a) through  
2 (1)(c), that ~~is-sufficient-to-cover~~ RECOVERS TO THE EXTENT  
3 PERMITTED BY THIS SUBSECTION (2) the department's cost of  
4 reviewing and acting upon the applications; and. THIS FEE  
5 MAY NOT BE LESS THAN \$250 OR MORE THAN \$5,000 PER DISCHARGE  
6 POINT FOR AN APPLICATION ADDRESSED UNDER SUBSECTION (1),  
7 EXCEPT THAT AN APPLICATION WITH MULTIPLE STORM WATER  
8 DISCHARGE POINTS MAY BE ASSESSED A LOWER FEE FOR THOSE  
9 POINTS ACCORDING TO BOARD RULE.

10 (b) an annual fee to be assessed according to the  
11 ~~potential-for-harm-to-state-waters--by--the--activity--under~~  
12 ~~permit--or--authorization--The--annual--fee--must--take--into~~  
13 ~~consideration--the volume and concentration of waste~~  
14 ~~discharged into state waters or the volume and concentration~~  
15 ~~of--process--materials-or-wastes-placed-in-an-impoundment-or~~  
16 ~~other---containment---facility---subject---to---the---permit~~  
17 ~~requirements-of-this-chapter. The annual fee MAY NOT BE LESS~~  
18 ~~THAN \$250 AND MAY NOT BE MORE THAN \$3,000 PER MILLION~~  
19 ~~GALLONS DISCHARGED PER DAY ON AN ANNUAL AVERAGE FOR ANY~~  
20 ~~ACTIVITY UNDER PERMIT OR AUTHORIZATION, AS DESCRIBED IN~~  
21 ~~SUBSECTION (1), EXCEPT THAT A PERMIT OR AUTHORIZATION WITH~~  
22 ~~MULTIPLE STORM WATER DISCHARGE POINTS MAY BE ASSESSED A~~  
23 ~~LOWER FEE FOR THOSE POINTS ACCORDING TO BOARD RULE. TO THE~~  
24 ~~EXTENT PERMITTED UNDER THIS LIMITATION, THE ANNUAL FEE must~~  
25 ~~be sufficient to pay the department's estimated cost of~~

conducting all tasks described under subsection (1) after subtracting:

- (i) the fees collected under subsection (2)(a);
- (ii) state general fund appropriations for functions administered under this chapter; and
- (iii) federal grants for functions administered under this chapter.

(3) For purposes of subsection (2), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality DISCHARGE PERMIT programs.

(4) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section in--a--timely--manner WITHIN 90 DAYS AFTER THE DATE ESTABLISHED BY RULE FOR FEE PAYMENT, the department may:

- (a) impose an additional assessment consisting of not more than 50% 20% of the fee plus interest on the required fee computed at the rate established under 15-31-510(3); or
- (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (4)(a).

(5) Fees collected pursuant to this section must be

deposited in an account in the state special revenue fund TYPE pursuant to [section 2].

(6) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(7) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection (6). The appeal to the board must include a written statement detailing the reasons that the permit holder or applicant considers the department's fee assessment to be erroneous or excessive.

(8) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (7), the undisputed portion of the fee must be paid to the department upon written request of the department.

(9) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(10) A MUNICIPALITY MAY RAISE RATES TO COVER COSTS ASSOCIATED WITH THE FEES PRESCRIBED IN THIS SECTION FOR A

PUBLIC SEWER SYSTEM WITHOUT THE HEARING REQUIRED IN  
69-7-111.

NEW SECTION. Section 2. Deposition of water quality permit fees. (1) There ALL FEES COLLECTED UNDER (SECTION 1) must be credited to an account in the state special revenue fund:

~~(a)--all-legislative-and-federal-appropriations--to--the department-for-administration-of-this-chapter; and~~

~~(b)--all-fees-collected-under-{section-1}.~~

(2) Money in the account may be used only to pay the department's cost in implementing the functions described in [section 1(1)].

SECTION 3. SECTION 69-7-111, MCA, IS AMENDED TO READ:

"69-7-111. Municipal rate hearing required -- notice.

(1) Except as provided in [section 1] and 75-6-108, if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days

prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel."

NEW SECTION. Section 4. Codification instruction.

[Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 5, part 5, and the provisions of Title 75, chapter 5, part 5, apply to [sections 1 and 2].

NEW SECTION. Section 5. Applicability. (1) [Section 1(1)] applies to all applications or petitions filed on or after October 1, 1993, and to all current and future holders of permits, licenses, or other authorizations described in [section 1(1)].

(2) The board of health and environmental sciences may

HB 0388/03

1 commence rulemaking prior to October 1, 1993.

-End-