

SENATE BILL 128

Introduced by Burnett

1/12	Introduced
1/12	Referred to Natural Resources
1/12	First Reading
1/12	Fiscal Note Requested
1/18	Fiscal Note Received
1/20	Fiscal Note Printed
1/20	Hearing
1/20	Tabled in Committee

Senate BILL NO. 128

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO CHARGE A FEE NOT TO EXCEED \$15 FOR OBJECTIONS TO APPLICATIONS FOR NEW WATER USE PERMITS OR TO CHANGES TO WATER USE PERMITS; AMENDING SECTION 85-2-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 85-2-113, MCA, is amended to read:

"85-2-113. Board powers and duties. (1) The board may prescribe fees or service charges for any a public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, for objections, and for all change approvals. Fees prescribed for objections may not exceed \$15. There shall may not be no fees for any an action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the board may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of the limitation contained in 85-2-306(1);

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or

1 property.

2 (4) (a) The board shall adopt rules to require the
3 owner or operator of an appropriation facility on a
4 watercourse or portions of a watercourse identified as
5 chronically dewatered by the department under 85-2-150 to
6 acquire, install, and maintain a suitable controlling and
7 measuring device no later than 2 years after designation of
8 the watercourse or portions of the watercourse as
9 chronically dewatered, except that where the board
10 specifically finds that the installation of measuring
11 devices along the entire watercourse or portions of the
12 watercourse is not practicable within the 2-year deadline,
13 it may establish a later deadline.

14 (b) For the purposes of subsection (4), an
15 appropriation facility includes but is not limited to any
16 method used to divert, impound, or withdraw water from a
17 watercourse. Hydroelectric facilities that are using
18 recognized methods of flow measurement, as determined by the
19 board, are in compliance with subsection (4)."

20 NEW SECTION. **Section 2. Severability.** If a part of
21 [this act] is invalid, all valid parts that are severable
22 from the invalid part remain in effect. If a part of [this
23 act] is invalid in one or more of its applications, the part
24 remains in effect in all valid applications that are
25 severable from the invalid applications.

1 NEW SECTION. **Section 3. Retroactive applicability.**
2 [This act] applies retroactively, within the meaning of
3 1-2-109, to all objections filed with the department after
4 September 30, 1992.

5 NEW SECTION. **Section 4. Effective date.** [This act] is
6 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0128, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: This bill would limit the Board of Natural Resources and Conservation's (board) rule-making authority under 85-2-113(1), MCA, by prescribing a fee for objections to water right permit and change applications that may not exceed \$15. It would prohibit any fee for an action taken by the Department of Natural Resources and Conservation (DNRC) at the request of the Water Judge or for the issuance of Certificates of Existing Water Rights. The \$15 objection filing fee applies retroactively to all objections filed with the Department after September 30, 1992.

ASSUMPTIONS:

1. The current objection filing fee is \$50 as prescribed by board Rule 36.12.103, effective July 31, 1992.
2. All objection filing fees collected by the DNRC are deposited in the water right appropriation account in the state special revenue fund of the state treasury as required by 85-2-318, MCA, for the purpose of helping to pay expenses of the DNRC to administer and enforce the water right statutes.
3. The February 1992 Special Legislative Session replaced \$80,000 of FY93 general fund with a like amount of water right appropriation funds. This required the board to increase water right fees by the same amount to fund water right activities.
4. 70% of the objection filing fees collected from October 1, 1992 to the effective date of this bill would have to be refunded to the Objectors. (Example: between Oct. 1, 1992 and Jan. 8, 1993 the DNRC received 57 objections and collected \$2,850. 70% or \$1,995 would have to be refunded.)
5. During the board's \$50 objection filing fee rule-making process in 1992, it was projected that 300 objections on the average would be filed each year resulting in approximately \$15,000 in fees.

FISCAL IMPACT:

1. The DNRC would be required to refund 70% of the objection filing fees already collected from October 1, 1992 to the effective date of the bill. It is currently estimated that approximately \$4,000 would need to be refunded.
2. This bill would reduce fee revenue by an estimated \$10,500 per year.
3. Alternative funding would be required to provide the operating cost difference for water rights administration. The general fund has historically been the alternative funding source.

Expenditures:

1. Approximately \$200 would be spent by the DNRC to refund the objection filing fees. This includes costs associated in retrieving the files from the Regional Offices, generating refund checks and postage costs.
2. A minimum cost to the DNRC of \$105 (3 pages at \$35 each) in fees to the Secretary of State would be needed to revise Board Rule 36.12.103 from \$50 to \$15.

(Continued)

David Lewis 1.18.93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

James H. Burnett 4/20/93
JIM BURNETT, PRIMARY SPONSOR DATE
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Revenues: The water rights appropriation account would receive approximately \$10,500 less in objection filing fee revenue each year if this bill is enacted.

Net Impact: A revenue loss of approximately \$10,500 per year.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: If counties or local government entities are objectors, their cost of filing objections would be reduced from \$50 to \$15.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: A loss of revenue in the water right state special revenue fund of approximately \$10,500 each year. The board may be forced to raise fees in other areas or the DNRC may require alternative funding to offset the lost fee revenues.

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