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House BILL NO. 420

INTRODUCED BY Wagner ~~Beard~~ Orr Bennett ~~Boer~~ Adams Jones

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE PREVAILING PARTY IN A LAWSUIT INVOLVING A COUNTY WATER OR SEWER DISTRICT TO RECOVER REASONABLE ATTORNEY FEES AND COSTS; PROHIBITING A COUNTY WATER OR SEWER DISTRICT FROM RAISING RATES, CHARGES, OR FEES MORE THAN 10 PERCENT OR MORE THAN ONCE IN A YEAR WITHOUT A VOTE OF PROPERTY OWNERS IN THE DISTRICT AND CUSTOMERS OF THE DISTRICT; PROVIDING THAT CHARGES FOR CONNECTING TO A COUNTY WATER SYSTEM OR SEWER LINE MAY NOT EXCEED THE ACTUAL COST OF CONNECTING TO THE SYSTEM OR LINE AND MAY NOT INCLUDE A PRO RATA FEE BASED ON THE INITIAL COST OF THE SEWER OR WATER SYSTEM; PROHIBITIONS THE COLLECTION OF DELINQUENT WATER OR SEWER CHARGES AS A TAX; AND AMENDING SECTIONS 7-13-2217, 7-13-2218, AND 7-13-2301, MCA."

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

Section 1. Section 7-13-2217, MCA, is amended to read:

"7-13-2217. General powers of water and/or sewer district. (1) Any district incorporated as provided in this part and part 23 ~~shall have power to~~ may:

- (a) have perpetual succession;
  - (b) sue and be sued, except as otherwise provided ~~herein or~~ by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction, and the prevailing party is entitled to reasonable attorney fees and costs;
  - (c) adopt a seal and alter it at pleasure;
  - (d) take by grant, purchase, gift, devise, or lease and to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers; and
  - (e) make contracts, employ labor, and do all acts necessary for the full exercise of the foregoing powers.
- (2) The powers enumerated in this part and part 23 ~~shall~~ must, except as otherwise provided in

1 this part and part 23, be exercised by the board of directors provided for in 7-13-2231 and elected and  
2 appointed as described in this part and part 23."

3

4 **Section 2.** Section 7-13-2218, MCA, is amended to read:

5 **"7-13-2218. District powers related to water and sewer projects.** Any district incorporated as  
6 provided in this part may:

7 (1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights,  
8 waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful  
9 or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial  
10 to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation,  
11 drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution  
12 abatement, livestock water supply, and other similar purposes.

13 (2) if the incorporators of the district are members of a private, nonprofit water association that  
14 was formed under the laws of this state, acquire by eminent domain from that water association any type  
15 of property referred to in this section;

16 (3) store water for the benefit of the district; conserve water for future use; appropriate, acquire,  
17 and conserve water and water rights for the purposes of the district; commence, maintain, intervene in,  
18 and compromise, in the name of the district; and assume the costs of any action or proceeding involving  
19 or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful  
20 for any purpose of the district or a benefit to any land situated in the district;

21 (4) commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent  
22 interference with or diminution of the natural flow of any stream or natural subterranean supply of waters  
23 used or useful for any purpose of the district or a common benefit to the lands within the district or its  
24 inhabitants;

25 (5) commence, maintain, and defend actions and proceedings to prevent any interference with the  
26 waters or rights referred to in this section as may endanger the inhabitants or lands of the district;

27 (6) lease from any person, firm, or public or private corporation, with the privilege of purchase or  
28 otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and  
29 maintain them;

30 (7) sell water or the use of water for household or domestic or other similar purposes or sell sewer

1 service and, whenever there is a surplus of water or sewerworks capacity, sell or otherwise dispose of the  
 2 water or sewerworks capacity to municipalities or towns or to consumers located within or outside the  
 3 boundaries of the district;

4 (8) retain the services of architects and engineers for designing, preparing a feasibility study for,  
 5 and drawing plans and specifications of a water or sewer system for the district, with the cost of these  
 6 services apportioned and assigned against properties in the district; and

7 (9) establish, by ordinance or resolution, rules and regulations for the operation, maintenance, use,  
 8 and availability of any of its systems or improvements, including but not limited to connection procedures,  
 9 service termination, deposits, and payment of rates and charges, including penalties and interest charges  
 10 for delinquent accounts."

11

12 **Section 3.** Section 7-13-2301, MCA, is amended to read:

13 **"7-13-2301. Establishment of charges for services -- payment of charges.** (1) The board of  
 14 directors shall fix all water and sewer rates and shall, through the general manager, collect the sewer  
 15 charges and the charges for the sale and distribution of water to all users.

16 (2) ~~(a) Except as provided in subsections (2)(b) and (2)(c), the~~ The board, in furnishing water, sewer  
 17 service, other services, and facilities, shall review, at least once every 2 years, and from time to time fix  
 18 the rate, fee, toll, rent, or other charge for the services, facilities, and benefits directly afforded by the  
 19 facilities, taking into account services provided and direct benefits received, that will be sufficient in each  
 20 year to provide income and revenue adequate for:

21 ~~(a)(i)~~ the payment of the reasonable expense of operation and maintenance of the facilities;

22 ~~(a)(ii)~~ administration of the district;

23 ~~(a)(iii)~~ the payment of principal and interest on any bonded or other indebtedness of the district;

24 and

25 ~~(d)(iv)~~ the establishment or maintenance of any required reserves, including reserves needed for  
 26 expenditures for depreciation and replacement of facilities, as may be determined necessary from time to  
 27 time by the board or as covenanted in the ordinance or resolution authorizing the outstanding bonds of the  
 28 district.

29 (b) The board may not increase the rates, fees, or charges:

30 (i) more than 10% without putting the question of the increase to a vote of all persons owning

1 property in the district and all customers of the district; or

2 (ii) more than once a year without putting the question of additional increases to a vote of all  
3 persons owning property in the district and all customers of the district.

4 (c) The board may conduct a mail ballot election as provided in Title 13, chapter 19, for the  
5 elections required in subsections (2)(b)(i) and (2)(b)(ii).

6 (d) An increase in rates, charges, or fees, subject to a vote as provided for in subsections (2)(b)(i)  
7 and (2)(b)(ii) may not be implemented if more than 50% of those voting vote against the increase.

8 (e) An original charge for connecting to a sewer line or to a water system may be assessed by the  
9 board, but the charge may not exceed the actual cost of connecting to the sewer line or water system.  
10 The boards may not charge new customers any prorated fee based on the initial cost of the sewer or water  
11 system.

12 (3) A person or entity may not use any facility without paying the rate established for the facility.  
13 In the event of nonpayment, the board may order the discontinuance of water or sewer service or both to  
14 the property and may require that all delinquent charges, interest, penalties, and deposits be paid before  
15 restoration of the service. The board may not charge any base rate or service charge for the period of time  
16 that sewer or water service has been discontinued.

17 ~~(4) (a) If the board has ordered discontinuance of service as provided in subsection (3) and the~~  
18 ~~person or entity who received the service has not made full payment of all delinquent charges, interest,~~  
19 ~~penalties, and deposits, then a district may elect to have its delinquent charges for water or sewer services~~  
20 ~~collected as a tax against the property by following the procedures of this subsection (4). If a charge for~~  
21 ~~services is due and payable in a fiscal year and is not paid by the end of the fiscal year, the general~~  
22 ~~manager shall, by July 15 of the succeeding fiscal year, give notice to the owners of the property to which~~  
23 ~~the service was provided. The notice must be in writing and:~~

24 ~~(i) must specify the charges owed, including any interest and penalty;~~

25 ~~(ii) must specify that the amount due must be paid by August 15 or it will be levied as a tax against~~  
26 ~~the property;~~

27 ~~(iii) must state that the district may institute suit in any court of competent jurisdiction to recover~~  
28 ~~the amount due; and~~

29 ~~(iv) may be served on the owner personally or by letter addressed to the post office address of the~~  
30 ~~owner as recorded in the county assessor's office.~~

1           ~~(b) On September 1 of each year, the general manager shall certify and file with the county~~  
2 ~~assessor a list of all property, including legal descriptions, on which arrearages remain unpaid. The list must~~  
3 ~~include the amount of each arrearage, including interest and penalty. The county assessor shall assess the~~  
4 ~~amount owed as a tax against each lot or parcel with an arrearage. If the property on which arrearages~~  
5 ~~remain unpaid contains a mobile home, the amount owed must be assessed as a tax against the owner of~~  
6 ~~the mobile home. If the mobile home for which arrearages remain unpaid is no longer on the property, the~~  
7 ~~amount owed must be assessed as a tax against the property.~~

8           ~~(5)(4)~~ In addition to collecting delinquent charges in the same manner as a tax, a A district may  
9 bring suit in any court of competent jurisdiction to collect amounts due as a debt owed to the district.

10           ~~(6)(5)~~ Notwithstanding any other section of part 22 or this part or any limitation imposed in part  
11 22 or this part, when the board has applied for and received from the federal government any money for  
12 the construction, operation, and maintenance of facilities, the board may adopt a system of charges and  
13 rates to require that each recipient of facility services pays its proportionate share of the costs of operation,  
14 maintenance, and replacement and may require industrial users of facilities to pay the portion of the cost  
15 of construction of the facilities that is allocable to the treatment of that industrial user's wastes."

16

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0420, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill allowing the prevailing party in a lawsuit involving a county water or sewer district to recover reasonable attorney fees and costs, and prohibiting a county water or sewer district from raising rates, charges, or fees more than 10 percent, or more than once in a year without a vote of property owners in the district and customers of the district.

ASSUMPTIONS:

1. The Department of Natural Resources and Conservation (DNRC) currently provides loans to water or sewer districts in the state with interest rates ranging from interest-free to market. Sources of funds for the loans are general obligation bonds backed by the coal severance tax and the wastewater revolving fund.
2. Three areas in the bill that amend current law may cause a water or sewer district the inability to collect sufficient funds to both operate the district and pay off its debt to the state: 1) rate charges in excess of 10% must be approved by a majority of the users, 2) hook-up charges cannot include pro-rata amounts of system installation, and 3) delinquent payments cannot be collected through taxes.
3. If a water or sewer district were unable to make its principal and interest payment to the state, and if the state were unable to make up the difference from other funding sources, the DNRC would have to seek supplementary funding, possibly from the general fund, to pay the debt service.

FISCAL IMPACT:

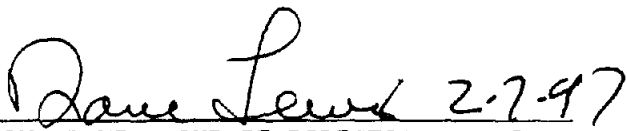
The fiscal impact would be determined by local voters.

EFFECT ON COUNTY OR LOCAL REVENUES OR EXPENDITURES:

It is assumed that the affected voters of a water and sewer district would always vote a sufficient rate increase to at least cover the cost of minimal operation. If this is true, then the only impact would be on the state (see above) or for funding of needed expansions.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Prohibiting an original charge for connecting to a sewer line or to a water system from exceeding the actual cost of connection would force current system users to subsidize the original capital cost of the facility or subsequent improvements for any new customers. Further, the district could not charge new customers any prorated fee based on the initial cost of the sewer or water system. These proposed requirements could create a disincentive for sewer or water districts to hook up new customers, even where it would be desirable to do so because of issues related to protecting public health or preventing environmental degradation.
2. Under HB 420, a district could not have a service charge for any period of time that sewer or water service has been discontinued. This proposed restriction could affect the financial viability of rural systems with substantial numbers of seasonal hookups. It would also provide a disincentive for rural sewer or water districts to provide service to seasonal customers. The result could be undesirable both in terms of protecting public health and preventing environmental degradation.
3. HB 420 would delete the existing provision in state law (7-13-2301 (4), MCA) which allows the collection of delinquent water or sewer charges as a tax. This provision is considered a vital tool to allow sewer and water districts to enforce user charges to cover the costs of operation and maintenance and debt service for loans or bonds.

  
DAVE LEWIS, BUDGET DIRECTOR Date  
Office of Budget and Program Planning

DOUGLAS WAGNER, PRIMARY SPONSOR DATE

Fiscal Note For HB0420, as introduced

**HB 420**