

Senate BILL NO. *346*

INTRODUCED BY *Rep. M. P. ...* *... Menahan Lynch Bush*

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE UPPER CLARK FORK RIVER BASIN NATURAL RESOURCE DAMAGE BOARD; ESTABLISHING AN UPPER CLARK FORK RIVER BASIN NATURAL RESOURCE DAMAGE BOARD ACCOUNT; PROVIDING FOR THE UPPER CLARK FORK RIVER BASIN NATURAL RESOURCE DAMAGE BOARD TO ALLOCATE FUNDS FROM THE UPPER CLARK FORK RIVER BASIN NATURAL RESOURCE DAMAGE LAWSUIT; AND PROVIDING A CONTINGENT EFFECTIVE DATE."

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

NEW SECTION. Section 1. Purpose. The purpose of [sections 1 through 3 and 5 through 11] is to provide a structure for the governor to allocate funds from a judgment or settlement of the Upper Clark Fork River basin natural resource damage lawsuit.

NEW SECTION. Section 2. Definition. Unless the context requires otherwise, in [sections 1 through 3 and 5 through 11], "board" means the Upper Clark Fork River basin natural resource damage board provided for in [section 4].

NEW SECTION. Section 3. Upper Clark Fork River basin natural resource damage board account.

(1) There is an Upper Clark Fork River basin natural resource damage board account in the state special revenue fund established in 17-2-102.

(2) There must be deposited into the Upper Clark Fork River basin natural resource damage board account the funds from the judgment or settlement of the Upper Clark Fork River basin natural resource damage lawsuit.

(3) Money is available to the board by appropriation and must be used to carry out the purposes of this part.

NEW SECTION. Section 4. Upper Clark Fork River basin natural resource damage board --

allocation -- composition. (1) (a) There is an Upper Clark Fork River natural resource damage board of nine

1 members.

2 (b) The governor shall appoint the Upper Clark Fork River natural resource damage board as
3 provided under 2-15-124.

4 (2) The Upper Clark Fork River natural resource damage board is attached to the department of
5 natural resources and conservation for administrative purposes only, as prescribed in 2-15-121.

6 (3) (a) The governor shall select the members of the Upper Clark Fork River natural resource
7 damage board from the natural resource damage area designated by the Upper Clark Fork River basin
8 natural resource damage lawsuit.

9 (b) The governor shall select members to the Upper Clark Fork River natural resource damage board
10 with expertise in any of the following fields:

11 (i) business;

12 (ii) engineering;

13 (iii) public administration;

14 (iv) planning;

15 (v) economic development;

16 (vi) finance;

17 (vii) resource management;

18 (viii) resource conservation; and

19 (ix) recreation.

20 (c) Members of the Upper Clark Fork River natural resource damage board must be representative
21 of the public and may not be members of a governmental agency.

22 (4) Members of the Upper Clark Fork River natural resource damage board shall serve staggered
23 3-year terms, subject to replacement at the discretion of the governor. The governor shall designate three
24 of the initial members to serve 1-year terms, three of the initial members to serve 2-year terms, and three
25 of the initial members to serve 3-year terms.

26 (5) The Upper Clark Fork River natural resource damage board shall dissolve once the money from
27 the Upper Clark Fork River basin natural resource damage judgment or settlement has been fully allocated.

28

29 **NEW SECTION. Section 5. Presiding officer, meetings, compensation, and facilities.** (1) The board
30 shall elect a presiding officer from among its members.

1 (2) The board shall meet quarterly and may meet at other times as called by the presiding officer
2 or a majority of the members.

3 (3) Members are entitled to compensation as provided for in 2-15-124(7).

4 (4) The board shall provide suitable office facilities located within the natural resource damage area
5 designated by the Upper Clark Fork River basin natural resource damage lawsuit.

6 (5) The board shall provide for necessary staff to carry out the provisions of [sections 1 through
7 3 and 5 through 11].

8
9 **NEW SECTION. Section 6. Board -- general powers.** The board may:

10 (1) adopt rules governing its proceedings;

11 (2) consider applications for grants from available funds;

12 (3) issue bonds for indebtedness to be repaid by the principal or interest from the judgment or
13 settlement from the Upper Clark Fork River basin natural resource damage lawsuit or other funds obtained
14 by the board;

15 (4) consider applications for loans from available funds for periods and interest rates to be
16 determined by the board;

17 (5) award grants and loans from available funds to:

18 (a) reimburse a local governmental unit, the state, or a nonprofit corporation for actual costs
19 incurred in pursuing the Upper Clark Fork River basin natural resource damage lawsuit;

20 (b) reimburse the state for state-supervised projects that directly impact:

21 (i) the natural resource damage area designated in the Upper Clark Fork River basin natural resource
22 damage lawsuit;

23 (ii) the population in the natural resource damage area designated in the Upper Clark Fork River
24 basin natural resource damage lawsuit;

25 (iii) projects that fall outside of the natural resource damage area designated in the Upper Clark Fork
26 River basin natural resource damage lawsuit;

27 (6) authorize or supervise the investment of money from the judgment or settlement from the Upper
28 Clark Fork River basin natural resource damage lawsuit or other funds obtained by the board;

29 (7) retain professional consultants and advisers; and

30 (8) carry out any other actions set forth in the restoration plan pursuant to 43 CFR 11.93 or any

1 other actions delineated in the settlement or judgment from the Upper Clark Fork River basin natural
2 resource damage lawsuit.

3

4 **NEW SECTION. Section 7. Basis for awarding grants or loans.** Grants and loans must be awarded
5 on the basis of:

6 (1) the restoration plan pursuant to 43 CFR 11.93 or any other actions delineated in the settlement
7 or judgment from the Upper Clark Fork River basin natural resource damage lawsuit;

8 (2) need;

9 (3) degree of severity of impact on the natural resources in the natural resource damage area
10 designated by the Upper Clark Fork River basin natural resource damage lawsuit;

11 (4) availability of funds;

12 (5) mitigation of the damaged natural resources;

13 (6) economic growth;

14 (7) positive impact on quality of life; and

15 (8) degree of local effort in meeting the needs listed in subsections (1) through (7).

16

17 **NEW SECTION. Section 8. Priorities for grants and loans.** The board shall give priority to grants
18 and loans that:

19 (1) carry out the directives of the restoration plan pursuant to 43 CFR 11.93 or any other actions
20 delineated in the settlement or judgment from the Upper Clark Fork River basin natural resource damage
21 lawsuit;

22 (2) provide direct restoration, replacement, or mitigation of damaged natural resources;

23 (3) provide indirect restoration, replacement, or mitigation of damaged natural resources;

24 (4) promote health and safety;

25 (5) provide for the infrastructure needs of the natural resource damage area designated in the
26 Upper Clark Fork River basin natural resource damage lawsuit; and

27 (6) provide for other community needs.

28

29 **NEW SECTION. Section 9. Applications for grants and loans.** (1) A local governmental unit, the
30 state, or a nonprofit corporation may apply for a grant or a loan to finance a project that meets the needs

1 of the restoration plan pursuant to 43 CFR 11.81 or any other actions delineated in the settlement or
2 judgment from the Upper Clark Fork River basin natural resource damage lawsuit.

3 (2) The applications for grants and loans for personnel costs associated with a project are limited
4 to those directly related to the project and to a reasonable overhead percentage as determined by the board.

5 (3) The board shall prescribe the form for applications for grants and loans.
6

7 **NEW SECTION. Section 10. Limitations on grants and loans.** (1) The board may commit itself
8 to the expenditure of funds for a grant for more than 1 year for a single project if the grant does not extend
9 for more than 20 years.

10 (2) The board may commit itself to the expenditure of funds for a loan for more than 1 year for a
11 single project if:

12 (a) the loan does not extend for more than 20 years;

13 (b) the repayment period does not extend beyond 20 years; and

14 (c) the commitment by the board does not exceed reasonable revenue expectations.

15 (3) (a) The board may not approve a loan if the source of money for repayment would be derived
16 from property taxes. Repayment may be made from fees, rentals, admissions, use charges, and special
17 assessments.

18 (b) The board shall hold all loan contracts within its administrative offices. The board may not sell,
19 assign, or pledge a loan contract to any other entity in a manner that discounts its value to the board or
20 the restoration plan pursuant to 43 CFR 11.93 or any other actions delineated in the settlement or judgment
21 from the Upper Clark Fork River basin natural resource damage lawsuit.

22 (c) A local governmental unit, the state, or a nonprofit corporation shall use or commit for use the
23 loan money within 1 year of the date of the board's final approval of the loan.

24 (d) If a local governmental unit, the state, or a nonprofit corporation does not comply with
25 subsection (3)(c), the entire loan must be repaid within 30 days following expiration of the 1-year period,
26 along with the interest that the loan may have earned with the loan proceeds.
27

28 **NEW SECTION. Section 11. Disposition of natural resource damage judgment or settlement funds.**

29 The board shall distribute money from the judgment or settlement for the Upper Clark Fork River basin
30 natural resource damage lawsuit in the following order:

1 (1) to the state to cover the state's legal costs of pursuing the Upper Clark Fork River basin natural
2 resource damage lawsuit pursuant to any contracts governing the state's costs;

3 (2) to actions delineated in the restoration plan established under 43 CFR 11.93 or any other
4 actions delineated in the settlement or judgment from the Upper Clark Fork River basin natural resource
5 damage lawsuit;

6 (3) not more than 15% to a state or local agency or a nonprofit corporation to implement natural
7 resource damage restoration, replacement, mitigation, or acquisition outside the natural resource damage
8 area designated by the Upper Clark Fork River basin natural resource damage lawsuit;

9 (4) not less than 85% to a state or local agency or a nonprofit corporation to implement natural
10 resource damage restoration, replacement, mitigation, or acquisition within the natural resource damage
11 area designated by the Upper Clark Fork River basin natural resource damage lawsuit.

12

13 **NEW SECTION. Section 12. Codification instructions.** (1) [Sections 1 through 3 and 5 through
14 11] are intended to be codified as an integral part of Title 75, chapter 1, and the provisions of Title 75,
15 chapter 1, apply to [sections 1 through 3 and 5 through 11].

16 (2) [Section 4] is intended to be codified as an integral part of Title 2, chapter 15, part 35, and the
17 provisions of Title 2, chapter 15, part 35, apply to [section 4].

18

19 **NEW SECTION. Section 13. Effective date.** [This act] is effective on the date of the judgment or
20 settlement of the Upper Clark Fork River basin natural resource damage lawsuit.

21

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0346, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing the Upper Clark Fork River Basin Natural Resource Damage Board; establishing an Upper Clark Fork River Basin natural resource damage board account; providing for the Upper Clark Fork River Basin Natural Resource Damage Board to allocate funds from the Upper Clark Fork River Basin natural resource damage lawsuit.

ASSUMPTIONS:

Department of Natural Resources and Conservation (DNRC):

1. The proposed board will be attached to the Department of Natural Resources and Conservation.
2. Four meetings per year will be held.
3. Meals, lodging and travel will be paid to the nine members at an annual cost of \$8,280.

Department of Justice:

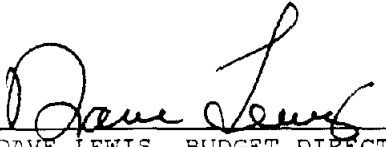
4. The bill suggests several possible conflicts with governing federal law. In the opinion of the attorneys responsible for litigating the natural resource damage lawsuit, litigation costs in an unknown amount are likely to be incurred defending the statute against claims that it violates federal law.
5. By excluding other parties asserting trusteeship in the Upper Clark Fork Basin, such as the United States Department of the Interior and the Confederated Salish and Kootenai Tribes, from the decision-making process regarding the implementation of the restoration, the bill may impair the state's ability to enter into a settlement that involves the claims of these other parties. Failure to settle the case will result in additional litigation costs that cannot be estimated with precision. The projected litigation budget for trial of the case over the upcoming biennium is \$1,492,000 of state special revenue funds.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Operating Expense	8,280	8,280
 <u>Funding:</u>		
General Fund (01)	8,280	8,280

TECHNICAL NOTES:

Section 6 (page 3) refers to issuing bonds for indebtedness. What type of bonds would this involve? Is there enabling legislation for this bond program?

 2-20-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

BEA MCCARTHY, PRIMARY SPONSOR DATE

Fiscal Note for SB0346, as introduced

SB 346