

SENATE BILL NO. 129

INTRODUCED BY J. COHENOUR

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROCEDURES FOR PROGRAMS PROPOSING TO MAINTAIN, REPAIR, OPERATE, OR ALTER STATE-OWNED WATER PROJECTS; INCREASING LIMITS FOR EXPENDITURES, REVISING THE APPEAL PROCESS; AND AMENDING SECTION 85-6-109, MCA."

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

Section 1. Section 85-6-109, MCA, is amended to read:

"85-6-109. Operation of projects with water users' association -- definitions. (1) As used in this section, the following definitions apply:

(a) "Association" means a water users' association.

(b) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) (a) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project in excess of \$25,000 but less than \$75,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association must be informed of the program and given an opportunity to comment.

(b) The department shall consider the association's comments and notify the association of its decision. ~~If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to the district court in any county where all or part of the project works is located or to the district court in Lewis and Clark County.~~

(3) (a) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project of equal to or more than \$75,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association must be informed of the program and given an opportunity to comment.

(b) If the association believes the program is unnecessary or excessive in cost, the association's comments must be prepared by a licensed professional, as defined in 18-8-202, and must include alternative options for evaluation by the department.



1 (c) The department shall evaluate the association's comments and notify the association of its decision.

2 (d) To appeal a decision to proceed with a program under this subsection (3), an association shall file
3 a petition with the district court in a county where all or part of the project works is located or with the district court
4 in Lewis and Clark County.

5 ~~(3)(4) If an appeal a petition is filed under subsection (2) (3), the court shall hold a trial de novo review~~
6 ~~the department's decision on the question of necessity of the department program and the question of excessive~~
7 ~~costs whether the program is unnecessary or excessive in cost pursuant to Title 2, chapter 4, part 7. If the~~
8 ~~association prevails, the court may award costs to the association. The court may specify an acceptable program~~
9 ~~of maintenance, repair, operation, or alteration or may order the department and the association to develop a~~
10 ~~program, subject to court approval.~~

11 ~~(4)(5) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department~~
12 ~~shall assist the association in attempting to secure sources of financing, including federal funds.~~

13 ~~(5)(6) Whenever the department proposes to abandon, sell, or otherwise dispose of a project that~~
14 ~~involves a water users' association, the department shall notify the association. Before the department may take~~
15 ~~further action to abandon, sell, or otherwise dispose of a project that involves a water users' association, the~~
16 ~~department must receive a petition approving the abandonment, sale, or disposition. The petition must be signed~~
17 ~~by stockholders of the association who represent 66 2/3% or more of the issued and outstanding stock of the~~
18 ~~association. If, within 30 days of receipt of the final proposal of abandonment, sale, or other disposal,~~
19 ~~stockholders of the association who represent 30% or more of the issued and outstanding stock of the association~~
20 ~~file a petition of protest with the department, the project may not be abandoned, sold, or otherwise disposed of~~
21 ~~without the consent of the legislature."~~

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