

SENATE BILL NO. 36

INTRODUCED BY B. HAMLETT

BY REQUEST OF THE WATER POLICY COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A DISTRICT COURT DISCRETION TO AWARD
6 REASONABLE COSTS AND ATTORNEY FEES INCURRED AS A RESULT OF AN APPEAL OF A FINAL
7 DECISION ON A PERMIT APPLICATION OR A CHANGE IN APPROPRIATION RIGHT; ~~PROHIBITING~~
8 ~~ALLOWING PROHIBITING~~ ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES INCURRED AS A
9 RESULT OF ADMINISTRATIVE PROCEEDINGS; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE AND A ~~RETROACTIVE~~ AN APPLICABILITY DATE."

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

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14 **Section 1.** Section 85-2-125, MCA, is amended to read:

15 **"85-2-125. Recovery of costs and attorney fees by prevailing party.** (1) If a final decision of the
16 department on an application for a permit or a change in appropriation right is appealed to district court, the
17 district court ~~shall~~ may award the prevailing party reasonable costs and attorney fees. THE DISTRICT COURT MAY
18 NOT NOT AWARD COSTS OR ATTORNEY FEES INCURRED AS A RESULT OF ADMINISTRATIVE PROCEEDINGS.

19 (2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable
20 costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with
21 a water right to enjoin the use of water by a person that does not have a water right."

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23 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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25 ~~NEW SECTION. Section 3. Retroactive applicability.~~ [This act] ~~applies retroactively, within the~~
26 ~~meaning of 1-2-109, to pending applications for a permit or a change in appropriation right for which a district~~
27 ~~court judgment has not been entered prior to [the effective date of this act].~~

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29 NEW SECTION. SECTION 3. APPLICABILITY. [THIS ACT] APPLIES TO AN APPLICATION FOR A PERMIT OR A
30 CHANGE IN AN APPROPRIATION RIGHT FILED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

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