



AN ACT PROVIDING A DISTRICT COURT DISCRETION TO AWARD REASONABLE COSTS AND ATTORNEY FEES INCURRED AS A RESULT OF AN APPEAL OF A FINAL DECISION ON A PERMIT APPLICATION OR A CHANGE IN APPROPRIATION RIGHT; ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES INCURRED AS A RESULT OF ADMINISTRATIVE PROCEEDINGS; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

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

**"85-2-125. Recovery of costs and attorney fees by prevailing party.** (1) If a final decision of the department on an application for a permit or a change in appropriation right is appealed to district court, the district court ~~shall~~ may award the prevailing party reasonable costs and attorney fees. The district court may award costs or attorney fees incurred as a result of administrative proceedings.

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

**Section 2. Effective date.** [This act] is effective on passage and approval.

**Section 3. Applicability.** [This act] applies to an application for a permit or a change in an appropriation right filed on or after [the effective date of this act].

- END -

I hereby certify that the within bill,  
SB 0036, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

SENATE BILL NO. 36  
INTRODUCED BY B. HAMLETT  
BY REQUEST OF THE WATER POLICY COMMITTEE

AN ACT PROVIDING A DISTRICT COURT DISCRETION TO AWARD REASONABLE COSTS AND ATTORNEY FEES INCURRED AS A RESULT OF AN APPEAL OF A FINAL DECISION ON A PERMIT APPLICATION OR A CHANGE IN APPROPRIATION RIGHT; ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES INCURRED AS A RESULT OF ADMINISTRATIVE PROCEEDINGS; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.