

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act **creating a negotiated conditioning process for a permit and change in appropriation right for municipal applicants and applicants using public water supply and waste water treatment facilities in closed basins;** and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Negotiated process - municipalities and public water supply and waste water treatment facilities - intent.**

(1) In meeting the policy of this state and a purpose of this chapter to provide for the wise utilization, development, and conservation of the waters of the state in accordance with 85-2-101(3), the legislature intends that a negotiated permit and change in appropriation right process be instituted to encourage wise land use development by municipalities and others by means of public water supply and waste water treatment facilities in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or administratively closed pursuant to 85-2-319 or 85-2-321 or by any administrative decision issued under this chapter.

(2) The department shall notify a municipality or an applicant that proposes to appropriate water for use in public water supply and waste water treatment facilities of the acceptance of a hydrologic

assessment under 85-2-361 and an aquifer recharge or mitigation plan under 85-2-362, or of the department's determination that no hydrologic assessment or plan is required.

(3) After receipt of notice under subsection (2), notice of a correct and complete application shall be prepared and published as provided in 85-2-307. The notice shall state that any federal, state or local agency or other person that may be affected by the issuance of a permit or change in appropriation right may participate in the negotiation process. A state or local agency or other person shall file a notice of intent to participate in the negotiations within 15 days after the last date of publication of the notice.

(4) The purpose of the negotiations is for the department to determine the conditions under which a permit or change in appropriation right may be exercised. The negotiated conditions must relate to the relevant criteria established in 85-2-311 and 85-2-402. The department may not issue a permit or change in appropriation upon any condition if a local government agency provides documentation that area to be served is precluded from development under a local ordinance, zoning regulation or growth plan. Upon completion of the negotiations the department shall determine the conditions of the permit or change in appropriation right.

(5) The department shall condition a permit or change in appropriation right within 180 days after the last date of publication of the notice required in subsection (3). However, the time may be extended upon agreement of the applicant or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, may be extended by not more than 60 days upon

order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons for the extension by first-class mail upon the applicant and each federal, state or local agency or person who has participated in the negotiations.

(6) The applicant must notify the department in writing within 15 days of the issuance of the conditions whether it accepts or rejects the conditions.

(7) (a) If the applicant, federal, state or local agency or other person that has participated in the negotiation process objects to the department determination then any review of the final department action shall be by arbitration. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3, and must be brought in the county where the water is proposed to be appropriated.

(b) The district court shall require the party seeking arbitration to file a bond or provide other security in such form and amount as the district court finds necessary to protect the municipality or applicant for a public water supply system from any damages accrued during the period of arbitration in the event the award is not vacated.

(c) The prevailing party in an arbitration proceeding shall be paid reasonable costs and attorneys fees.

(8) The department shall prepare an arbitration procedure for use by the parties to a negotiation proceeding. The arbitration procedure must contain provisions, including but not limited to:

(a) the appointment by a district court of three arbitrators with

technical expertise in water resource related fields from a list of arbitrators submitted by the parties to arbitration;

(b) the exercise of power by the arbitrators;

(c) an arbitration hearing process, including time and place for hearing, notification, presentation of issues and supporting facts, which may not exceed those presented to the department in the negotiation process, and the issuance of the award or change of award; and

(d) the fees and expenses of arbitration.

NEW SECTION. **Section 2. {standard} Effective date.** [This act] is effective on passage and approval.

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