

## SENATE BILL NO. 365

INTRODUCED BY STORY, OLSON, KLOCK, GEBHARDT, TASH, BOGGIO

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO WATER COMMISSIONERS; PROVIDING THAT ~~A~~ AT THE DISTRICT COURT MAY ISSUE COURT'S DISCRETION A BILL MAY BE ISSUED PRIOR TO THE BEGINNING OF A DISTRIBUTION SEASON FOR THE PURPOSE OF OFFSETTING COSTS ASSOCIATED WITH DISTRIBUTING WATER; PROVIDING THAT A BILLING BEFORE A DISTRIBUTION SEASON MAY NOT EXCEED 80 PERCENT OF THE AMOUNT THAT WAS PAID BY A WATER USER DURING THE PRIOR DISTRIBUTION SEASON; AMENDING SECTIONS 85-5-107, 85-5-201, 85-5-204, AND 85-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 85-5-107, MCA, is amended to read:

**"85-5-107. Record of ~~daily~~ DAILY distribution of water.** (1) Each water commissioner ~~must~~ shall keep a ~~daily~~ DAILY record, UNLESS A DIFFERENT RECORDING SCHEDULE IS ORDERED BY THE DISTRICT JUDGE, of the amount of water distributed to each water user and ~~must~~ shall file a summary of ~~such~~ the record with the clerk of the court monthly or seasonally, at the discretion of the district judge during ~~his~~ the judge's term of service, ~~showing~~ The report must show in detail the total amount of water distributed ~~each day~~ to each water user during ~~such~~ the month or the season and the ~~amount of cost therefor~~ of distributing the water, based upon the water commissioner's or commissioners' daily salary, ~~per day and~~ other costs of the water commissioner or commissioners approved by the district judge, and the proportionate amount of water distributed. When two or more water commissioners serve under the same decree or decrees by order of the judge, they may file a joint summary of their ~~record~~ records with the clerk of the court, or the chief commissioner, if one has been appointed by the judge, may file a summary ~~in~~ on behalf of all of them.

(2) If the district court judge determines that it is necessary to establish a billing cycle prior to a distribution season, as provided in 85-5-204, the report or reports must serve as the basis for the amounts billed."

**Section 2.** Section 85-5-201, MCA, is amended to read:**"85-5-201. Distribution of water and related expenses.** (1) ~~Every~~ Each water commissioner appointed

by the judge of the district court for ~~that~~ the purpose of distributing water has ~~shall have~~ the authority to ~~admeasure~~ determine the appropriate quantity and distribute to the parties interested, under ~~such a~~ decree, permit, or certificate, the water to which those who are parties to the decree or holders of a permit or certificate; ~~or privy thereto~~, are entitled; according to their priority as established by the decree, permit, or certificate.

(2) ~~The water commissioner, in case the parties fail or refuse to do so,~~ may incur necessary expenses in the making of headgates or dams for the distribution of the waters ~~if the parties fail or refuse to do so. Such expense shall~~ Expenses associated with making headgates or dams for the distribution of water must be assessed against and paid by the party or parties for whom ~~such the~~ services in the repair of the ditch or ditches and the making of any dams or headgates were necessary. In the discretion of the court, ~~such the~~ costs or expenses may be assessed against the land upon which or for the benefit of which ~~such the~~ expense had been incurred.

(3) ~~The~~ (A) AT THE district court COURT'S DISCRETION, A WATER COMMISSIONER may bill water users prior to the beginning of a distribution season for the purpose of offsetting costs associated with distributing water and water commissioner duties BY SUBMITTING THE INFORMATION NECESSARY FOR THE BILLING TO THE CLERK OF DISTRICT COURT. A billing issued prior to the beginning of a distribution season:

~~(a)~~ (i) must be assessed on a per-user basis;  
~~(b)~~ (ii) must be based on the report provided for in 85-5-107 for the prior year; and  
~~(c)~~ (iii) may not exceed 80% of the amount that was provided to the district court pursuant to 85-5-107 for the prior distribution season on a per-user basis.

(B) UPON RECEIPT OF THE INFORMATION FROM THE WATER COMMISSIONER, THE CLERK OF DISTRICT COURT SHALL PROCEED AS PROVIDED IN 85-5-204."

**Section 3.** Section 85-5-204, MCA, is amended to read:

**"85-5-204. Apportionment of fees and expenses.** (1) Upon the filing of the report by the water commissioner or water commissioners, the clerk of court shall ~~forthwith~~ notify by letter each person mentioned in ~~such the~~ report:

(a) of the amount ~~he the water user~~ is made liable for by ~~such the~~ report;  
 (b) that objections to ~~such the~~ report and the amount ~~so~~ taxed against ~~him the water user~~ may be made by any person interested ~~therein in the report or the amount assessed against the water user~~ within 20 days after the date of the mailing of ~~said the~~ notice; and

(c) ~~that~~, unless objections ~~thereto~~ are filed, an order will be made by the judge of ~~said the~~ district court finally fixing and determining the amount due from each of ~~said the~~ water users.

(2) The affidavit of the clerk that ~~he the~~ clerk has mailed a notice to each person mentioned in the report at ~~such the~~ person's ~~last-known~~ last-known post-office address, in the usual manner, ~~shall must be deemed~~ considered prima facie evidence that the person received ~~that the~~ notice provided for in this section.

(3) At the discretion of the district judge, the clerk WATER COMMISSIONER may issue a bill prior to the beginning of a distribution season for the purpose of offsetting costs associated with distributing water and water commissioner duties BY SUBMITTING THE INFORMATION NECESSARY FOR THE BILLING TO THE CLERK OF DISTRICT COURT. The bill for each water user may not exceed 80% of the amount that was provided to the district court pursuant to 85-5-107 for the prior distribution season.

(4) If the cost of distributing water during a distribution season is less than the amount that was collected through a bill issued prior to a distribution season, the clerk WATER COMMISSIONER shall refund the money to the water user based on the amount of water that the water user received during the distribution season. THE WATER COMMISSIONER SHALL SUBMIT A REFUND REPORT, ALONG WITH PROOF THAT ANY REFUNDS WERE ISSUED, TO THE CLERK OF DISTRICT COURT FOR FILING."

**Section 4.** Section 85-5-206, MCA, is amended to read:

**"85-5-206. Effect of order fixing fees.** After the order of the court fixing the fees and compensation and expenses of the water commissioner is final, ~~it shall have all the order has~~ the force and effect of a judgment ~~as~~ against the person to whom the water was ~~or will be admeasured~~ distributed and for whose benefit it was used ~~or will be used~~. When ~~such expense~~ the expenses of a commissioner or commissioners has been assessed against the land for which ~~such the~~ service of the commissioner or commissioners has been rendered, ~~it shall constitute the assessment is~~ a lien against ~~said the~~ land. ~~Execution may issue upon the order, as upon a judgment, by direction of the court or judge upon the application of any person interested therein. The lien has the same effect as a judgment. The lien may be executed in the same manner as a judgment upon order of the court. The water commissioner, at his the water commissioner's discretion, may withhold further admeasurement determinations of quantity or distribution of water to any person otherwise entitled thereto to the water until such the person shall have has paid all fees, compensation, and expenses of such the water commissioner or commissioners so fixed by the court and apportioned and charged to such the person, including bills sent prior to the beginning of a distribution season. and likewise The commissioner may withhold the admeasurement~~

1 determination of quantity and distribution of water from any land against which there exists any ~~such~~ lien ~~as~~  
2 ~~aforesaid; that is the result of lack of payment pursuant to this section until such the lien shall have~~ has been fully  
3 discharged."

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5 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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