

HOUSE BILL NO. 609

INTRODUCED BY TAYLOR, JACKSON, HEINERT

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT INJUNCTIVE RELIEF IS AVAILABLE FOR A PERSON TRYING TO ENFORCE A WATER RIGHT; PROVIDING THAT A PERSON TRYING TO ENFORCE A WATER RIGHT MUST BE AWARDED REASONABLE COSTS AND ATTORNEY FEES; AMENDING ~~SECTIONS 27-19-201 AND~~ SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

~~Section 1.~~ Section 27-19-201, MCA, is amended to read:

~~"27-19-201. When preliminary injunction may be granted.~~ An injunction order may be granted in the following cases:

~~(1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;~~

~~(2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;~~

~~(3) when it appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;~~

~~(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of the adverse party's property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;~~

~~(5) when it appears that the applicant has applied for an order under the provisions of 40-4-121 or an order of protection under Title 40, chapter 15;~~

~~(6) when it appears that the adverse party is using water without a valid water right or is unlawfully interfering with the exercise of a valid water right."~~

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



1 **"85-2-125. (Temporary) Recovery of attorney fees by prevailing party.** (1) ~~(a)~~ In the Upper Clark
 2 Fork River basin, as defined in 85-2-335, the prevailing party in a hearing under 85-2-309 on an application for
 3 a permit or change approval may bring an action in district court for costs and attorney fees. The court shall
 4 award the prevailing party reasonable costs and attorney fees.

5 ~~(b)~~(2) (a) If a final decision of the department on an application for a change approval in the Upper Clark
 6 Fork River basin is appealed to a district court, the district court shall award the prevailing party reasonable costs
 7 and attorney fees.

8 ~~(2)~~(b) If a final decision of the department on an application for a permit is appealed to district court, the
 9 district court shall award the prevailing party reasonable attorney fees.

10 (3) The prevailing party OBTAINING INJUNCTIVE RELIEF in an action to enforce a water right must be
 11 awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means
 12 AN ACTION BY A PARTY WITH A WATER RIGHT to contest ENJOIN the use of water by a person that does not have a
 13 valid water right. for the use being contested.

14 ~~(4) Injunctive relief is available under an action brought pursuant to subsection (3):~~ (Terminates June
 15 30, 2005--sec. 14, Ch. 487, L. 1995.)

16 **85-2-125. (Effective July 1, 2005) Recovery of attorney fees by prevailing party.** (1) If a final
 17 decision of the department on an application for a permit is appealed to district court, the district court shall
 18 award the prevailing party reasonable costs and attorney fees.

19 (2) The prevailing party OBTAINING INJUNCTIVE RELIEF in an action to enforce a water right must be
 20 awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means
 21 AN ACTION BY A PARTY WITH A WATER RIGHT to contest ENJOIN the use of water by a person that does not have a
 22 valid water right. for the use being contested.

23 ~~(3) Injunctive relief is available under an action brought pursuant to subsection (2):"~~

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 25 NEW SECTION. Section 2. Saving clause. [This act] does not affect rights and duties that matured,
 26 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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28 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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