

HOUSE BILL NO. 238
INTRODUCED BY ANDERSEN

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING LOCAL GOVERNMENT ENTITIES FROM CERTAIN REQUIREMENTS FOR SHORT-TERM LEASE OF A WATER APPROPRIATION RIGHT FOR ROAD CONSTRUCTION OR CERTAIN DUST ABATEMENT ACTIVITIES; EXEMPTING LOCAL GOVERNMENT ENTITIES FROM THE REQUIREMENT TO SUBMIT AN ANALYSIS OF POTENTIAL ADVERSE EFFECTS AND A DESCRIPTION OF PLANNED ACTIONS TO MITIGATE POTENTIAL ADVERSE EFFECTS; EXEMPTING LOCAL GOVERNMENT ENTITIES FROM CERTAIN PUBLIC NOTICE REQUIREMENTS; REQUIRING THAT A LOCAL GOVERNMENT ENTITY POST A COPY OF THE LEASE AGREEMENT AT THE POINT OF DIVERSION WHEN WATER IS DIVERTED UNDER A SHORT-TERM LEASE AGREEMENT; AMENDING SECTION 85-2-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-410, MCA, is amended to read:

"85-2-410. Short-term lease of appropriation right. (1) An appropriator may lease for a term not to exceed 90 days all or part of an appropriation right for road construction or dust abatement without the prior approval of the department, subject to the requirements of this section. The lease agreement must include the following information:

- (a) the name and address of the lessee;
- (b) the name of the owner of the appropriation right;
- (c) the number of the appropriation right;
- (d) the purpose of use of water for which the lease is being made;
- (e) the source of water to be appropriated;
- (f) the starting and ending date of the proposed use of water;
- (g) the proposed point of diversion;
- (h) the proposed place of use;
- (i) the diversion flow rate and volume of water to be used during the period of use; and
- (j) a description of how the existing use of water will be reduced to accommodate the temporary change of use of the appropriation right, including the number and location of acres to be removed from irrigation, if

applicable.

(2) A short-term lease of an appropriation right under this section may not exceed 60,000 gallons a day or the amount of the appropriation right, whichever is less. Any combination of short-term leases cannot exceed 120,000 gallons a day for one project.

(3) ~~The~~ Except as provided in subsection (9), the following information must be submitted to the department at least 2 days prior to the use of water by a lessee under this section:

(a) a copy of the publication notice or copies of the individual notice required under subsection (4);

(b) a copy of the lease agreement; and

(c) for a combination of short-term leases greater than 60,000 gallons a day for one project, an analysis by the lessee of any potential adverse effects and a description of planned actions to mitigate any potential adverse effects to appropriators in the area of the proposed point of diversion.

(4) ~~The~~ Except as provided in subsection (9), the lessee of an appropriation right under this section shall, 30 days prior to the use of the water, publish a notice of the proposed use of water once in a newspaper of general circulation in the area of the diversion or mail individual notice to potentially affected appropriators in the area of the proposed point of diversion. The published notice or the individual notice must contain the information listed in subsections (1)(a) through (1)(j) and (3)(c).

(5) (a) The owner of a water right, whether the right is prior or subsequent in priority to the short-term lease acquired by a person under this section, who cannot satisfy in full the owner's right during the time that the short-term lessee is diverting water may make a complaint to the department and cause the short-term lessee's diversion to be discontinued.

(b) The diversion is discontinued until the owner's right is satisfied or until the lessee establishes to the department that the discontinuance has had no effect on the owner's water right. Upon establishment that discontinuance has not had an effect, the department shall enter an order allowing the diversion to continue.

(6) If a person purposely, with malicious intent, causes the discontinuance of a short-term diversion through the complaint process provided in subsection (5)(a) and the complaint is found to be invalid and frivolous, the person is, upon conviction, guilty of a misdemeanor and shall be fined in an amount not to exceed \$500.

(7) This section does not limit the remedies available to an appropriator to enjoin or to seek damages from a person appropriating water under this section.

(8) A civil action instituted to enjoin or seek damages from a person appropriating water pursuant to this section must be commenced against the lessee. The lessor is not a necessary party to a civil action. The lessee has the burden of establishing that the lessee's use does not have an adverse effect on a prior appropriator of

water.

(9) (a) A local government entity, as defined in 7-6-602, is not subject to the requirements of subsections (3)(a), ~~(3)(c)~~, and (4) WHEN CONDUCTING DUST ABATEMENT THAT WAS NOT SCHEDULED OR CONTRACTED FOR 30 DAYS OR MORE PRIOR TO THE USE OF THE WATER.

(b) A local government entity that does not publish notice as provided in subsection (4) shall post a copy of the lease agreement at the point of diversion AT LEAST 24 HOURS PRIOR TO AND during the time that water is diverted."

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

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