

HOUSE BILL NO. 388

INTRODUCED BY LAKE, FUCHS, HURWITZ, LAMBERT, PETERSON, ROSS, YOUNKIN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING INDIVIDUAL OWNERS OF TRACTS OF LAND 3 ACRES OR SMALLER IN SIZE THAT ARE LOCATED WITHIN THE BOUNDARIES OF IRRIGATION DISTRICTS AND THAT ARE NOT BEING SERVED BY THE IRRIGATION DISTRICT WORKS TO BE ELIMINATED FROM FUTURE SERVICES, ASSESSMENTS OVER AND ABOVE CURRENT INDEBTEDNESS, AND LIABILITY UPON PAYMENT OF A SEVERANCE FEE OR NEGOTIATED AMOUNT; REQUIRING THAT OWNERS OF TRACTS LOCATED WITHIN AN IRRIGATION DISTRICT THAT HAS A CONTRACT WITH THE UNITED STATES BUREAU OF RECLAMATION MAY NOT BE PETITIONED OUT PAY A SEVERANCE FEE OR NEGOTIATED AMOUNT TO BE EXCLUDED FROM FUTURE SERVICES, ASSESSMENTS, AND LIABILITY OF THE DISTRICT IF ~~THE LOSS OF THAT ACREAGE WOULD IMPAIR THE CONTRACT UNLESS THERE IS SUITABLE ACREAGE TO REPLACE THE PETITIONED ACREAGE; AMENDING SECTIONS 85-7-411 AND 85-7-1802, MCA~~ THE PETITIONER COOPERATES WITH THE DISTRICT IN ORDER TO COMPLY WITH FEDERAL LAWS AND REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

NEW SECTION. Section 1. Small tract petition to exclude land from future services, assessments, and liability of irrigation district. (1) (a) Subject to subsection (1)(b), whenever a tract of record that is 3 acres or smaller in size is located within an irrigation district, is not served and has not been served for the previous 5 years by any district system, facility, or other undertaking, and cannot be served without an unreasonable burden being placed on the owner of the tract or the district, the owner of the tract may:

(i) petition for the purpose of excluding the tract from future services, assessments, and liability of the district as provided in subsection (2); or

(ii) file a request with the irrigation district for the purpose of excluding the tract from future services, assessments, and liability of the district as provided in subsection (1)(c).

(b) If the exclusion of the tract from future services, assessments, and liability of the district threatens provisions of a United States bureau of reclamation contract, the owner of the tract may not petition for the

exclusion of the tract from future services, assessments, and liability unless the owner cooperates with the district in order to comply with federal laws and requirements.

(c) A tract owner may file a request with the district to exclude a tract from future services, assessments, and liability of the district. The district may agree with the tract owner on any amount determined appropriate for that exclusion.

(2) When a tract of land in an irrigation district meets the requirements of subsection (1), the owner may petition the district court for an exclusion of the tract from future services, assessments, and liability of the district, subdistrict, or combination of a district and subdistrict. The petition must be signed by all persons who hold title to the tract and must include:

(a) the name of the irrigation district;

(b) the name and address of the persons holding title to the tract;

(c) evidence of the title to the tract as provided in 85-7-101 and 85-7-102;

(d) a copy of a map or plat of the irrigation district showing the location of the tract to be excluded from future services, assessments, and liability of the district and the relation of that land to the irrigation works of the district;

(e) a statement, corroborated by adequate documentation, that the users of the tract do not and cannot feasibly obtain water from the irrigation district through existing irrigation works and no longer want the tract to be included in the irrigation district's assessment rolls;

(f) a copy of a recent tax statement documenting assessment of the tract by the irrigation district;

(g) a request that the tract be excluded from future services, assessments, and liability of the irrigation district; and

(h) payment to the irrigation district representing a severance fee as provided in subsection (3).

(3) (a) Subject to subsection (3)(b), the severance fee that must be paid by an owner of a tract petitioning the district court to exclude a tract from future services, assessments, and liability of the irrigation district must be determined by adding the following:

(i) the present value of existing irrigation district debt apportioned to the petitioned tract; and

(ii) one-half of the present value of future irrigation district operation and maintenance costs apportioned to the petitioned tract for 40 years.

(b) The minimum severance fee is \$100.

(c) The department of natural resources and conservation shall adopt by rule the present value formula to be used in determining the severance fee. The rules must include:

- (i) direction on whether current or average assessment rates must be used; and
 - (ii) the treasury rate or interest rate to be used in the calculation.
- (d) The severance fee must be determined using the values applicable on the date of filing.
- (4) Upon filing the petition with the court, the petitioner shall mail a copy of the completed petition by certified mail to the irrigation district that is subject to the petition.
- (5) The petitioner shall file the petition, proof of mailing pursuant to subsection (4), and a \$20 fee with the clerk of the district court for the county in which the irrigation district was created.
- (6) Within 45 days of the date of the filing of the petition, the irrigation district may file an objection to the petition. To be valid, the objection must provide sufficient evidence that the provisions of subsection (1) do not apply.
- (7) If a valid objection is filed, the district court may hold a hearing if necessary to resolve the facts stated in the petition.
- (8) The court shall grant the petition to exclude the tract from future services, assessments, and liability:
- (a) if no objections are filed within 45 days of filing the petition; or
 - (b) upon determination of the district court that the petition is sufficient.
- (9) The district court shall forward to the irrigation district:
- (a) a copy of the order granting the exclusion; and
 - (b) the severance fee.
- (10) A petition granted pursuant to this section excludes the owner of the petitioned tract from:
- (a) irrigation district services, assessments, and liability;
 - (b) holding an office on the district board;
 - (c) participating in future district administrative matters; and
 - (d) objecting to a petition by the district to remove the acreage from the district boundaries as provided in 85-7-1802.
- (11) Once a petition is granted, services, assessments, administrative fees, miscellaneous fees, and charges may not be collected from the owner of the petitioned tract and the owner is exempt from future liability of the district.

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 7, part 21, and the provisions of Title 85, chapter 7, part 21, apply to [section 1].

NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 5. Termination.** [This act] terminates December 31, 2007.

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