

HOUSE BILL NO. 93  
INTRODUCED BY D. BARRETT

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE WATER ADJUDICATION FEE; CLARIFYING CLAIMS EXAMINATION PRIORITIES; PROVIDING FOR COMPLETION OF EXAMINATION ON A BASIN-BY-BASIN BASIS; TRANSFERRING MONEY FROM THE GENERAL FUND TO THE WATER ADJUDICATION ACCOUNT; PROVIDING THAT AN APPROPRIATION FOR WATER ADJUDICATION MAY NOT BE PART OF THE BASE BUDGET IF THE CLAIMS EXAMINATION BENCHMARKS ARE NOT MET; PROVIDING FOR THE COLLECTION OF OUTSTANDING WATER ADJUDICATION FEES; AMENDING SECTIONS 15-1-216, 17-7-102, 85-2-270, 85-2-271, 85-2-280, AND 85-2-281, MCA; REPEALING SECTIONS 85-2-272, 85-2-273, 85-2-276, 85-2-279, 85-2-283, MCA, AND SECTION 15, CHAPTER 288, LAWS OF 2005; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

**Section 1.** Section 15-1-216, MCA, is amended to read:

**"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions -- uniform provision for interest on overpayments.** (1) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

(2) (a) Except as provided in subsection (2)(b), a person who fails to pay a tax when due must be assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.

(b) A person who fails to pay a tax when due under chapter 30, part 2, chapter 53, chapter 65, or chapter 68 must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.

(c) The penalty imposed under subsection (2)(a) or (2)(b) accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

(3) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return when due or fails to file a return within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of not less than \$1,000 or more than \$10,000. The department may

bring an action in the name of the state to recover the penalty and any delinquent taxes.

(4) (a) Interest on taxes not paid when due must be assessed by the department. The department shall determine the interest rates established under subsection (4)(a)(i) for each calendar year by rule subject to the conditions of this subsection (4)(a). Interest rates on taxes not paid when due for a calendar year are as follows:

(i) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12%.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

(5) (a) Except as provided in subsection (5)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 [and the former 85-2-276].

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70.

(6) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

(7) Penalty and interest must be calculated and assessed commencing with the due date of the return.

(8) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

(9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection (4)(a)(i). (Bracketed language in subsection (5)(a) terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

**Section 2.** Section 17-7-102, MCA, is amended to read:

**"17-7-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

- (a) the governor or the governor's designated representative for executive branch agencies;
- (b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;
- (c) the speaker for the house of representatives;
- (d) the president for the senate;
- (e) appropriate legislative committees or a designated representative for legislative branch agencies;

or

(f) the board of regents of higher education or its designated representative for the university system.

(4) (a) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.

(b) The term does not include funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new

proposal.

(10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

- (a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;
- (b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;
- (c) inflationary or deflationary adjustments; and
- (d) elimination of nonrecurring appropriations.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell."

**Section 3.** Section 85-2-270, MCA, is amended to read:

**"85-2-270. (Temporary) Findings -- purpose.** (1) The purpose of ~~85-2-270 through 85-2-273, 85-2-276, and 85-2-279~~ 85-2-271, 85-2-280 through 85-2-283 85-2-282, and this section is to: ~~generate revenue to adequately fund Montana's water adjudication program to:~~

- (a) complete claims examination and the initial decree phase;
- (b) reexamine claims in basins that were verified and were not subject to the supreme court examination rules when the water court has received a petition and issued an order pursuant to 85-2-282 or the water court has issued an order on its own initiative; and

- (c) ensure that the product of the adjudication is enforceable decrees.

(2) With adequate funding, it is realistic and feasible for the department to complete claims examination and reexamination of verified basins for which the water court has received a petition and issued an order pursuant to 85-2-282 or the water court has issued an order on its own initiative by June 30, 2015. It is also realistic and feasible for the water court to issue a preliminary or temporary preliminary decree by June 30, 2020,

for all basins in Montana.

~~(3) It is essential to preserve the trust that the water users of Montana have placed in the legislature by ensuring that the revenue generated by the water adjudication fee established in 85-2-276 is used only for the purpose of adjudicating Montana's water rights. (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"~~

**Section 4.** Section 85-2-271, MCA, is amended to read:

**"85-2-271. (Temporary) Benchmarks -- action taken if not met -- claims examination priority.** (1)

(a) The completion of initial claims examination is of a higher priority than reexamination of claims that were subject to the verification process unless the chief water judge issues an order making reexamination a higher priority, as provided in subsection (3)(b).

(b) The department shall develop a list of basins to be examined that is prioritized by year and updated annually. In order to facilitate the efficient use of department and water court resources, the department shall complete examination in a basin prior to examining a different basin.

(2) There are approximately 57,000 water right claims that were filed pursuant to 85-2-212 that must be examined. There are approximately 98,000 claims that were verified that may be reexamined using the supreme court examination rules if the water court receives a petition and issues an order as provided in 85-2-282 or the water court issues an order on its own initiative.

(3) (a) The water court shall prioritize basins for the purpose of claims examination and reexamination by the department.

(b) The chief water judge has the authority to order that reexamination be completed for a certain basin in a higher priority than claims examination. If the chief water judge issues an order requiring the department to reexamine claims rather than examining claims, the number of claims that were reexamined must be counted against the amount of claims that the department is required to examine for that period.

(4) (a) The cumulative benchmarks that are provided in subsection (4)(b) must be met. If the benchmarks are not met, ~~the fee contained in 85-2-276 that is attached to a water right for the purpose of funding the adjudication may not be assessed the following even-numbered year~~ money for water adjudication may not be included in the department's base budget. All claims must be examined by June 30, 2015.

(b) The cumulative benchmarks are as follows:

Date	Total Number of Claims Examined
December 31, 2006	8,000
December 31, 2008	19,000

December 31, 2010	31,000
December 31, 2012	44,000
June 30, 2015	57,000

(Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

**Section 5.** Section 85-2-280, MCA, is amended to read:

**"85-2-280. (Temporary) Water adjudication account.** (1) There is a water adjudication account within the state special revenue fund created in 17-2-102.

(2) (a) For the period beginning July 1, 2005, and ending June 30, 2015, there is allocated to the department and the water court up to \$2.6 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the water adjudication account for the sole purpose of funding the water adjudication program. These funds may not be used for the purpose of updating or maintaining a computer database.

(b) For the period beginning July 1, 2015, and ending June 30, 2020, there is allocated to the department and the water court up to \$1 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the account for the sole purpose of funding the water adjudication program.

(c) The allocations in subsections (2)(a) and (2)(b) are subject to appropriation by the legislature.

~~(3) (a) Subject to subsection (3)(b), the total amount of revenue deposited in the water adjudication account from the fee provided for in 85-2-276 may not exceed \$31 million.~~

~~\_\_\_\_\_ (b) If federal funds are appropriated for the purposes of 85-2-270 through 85-2-273, 85-2-276, and 85-2-279 through 85-2-283, the maximum amount that may be deposited in the account must be reduced by the amount of federal funds appropriated.~~

~~\_\_\_\_\_ (c) Once revenue generated from the fees provided for in 85-2-276 and any federal revenue appropriations have reached \$31 million, the fee may no longer be assessed.~~

~~(4)(3)~~ Interest and income earnings on the water adjudication account must be deposited in the account.

~~(5)(4)~~ Revenue Money remaining in the water adjudication account on June 30, 2020, must be transferred to the water right appropriation account provided for in 85-2-318.

(5) If the accountability benchmarks contained in 85-2-271 are not met, expenditures from the account in the previous biennium may not be included in the department's base budget, as defined in 17-7-102, for the current biennium. (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

**NEW SECTION. Section 6. Funds transfer.** There is transferred \$25 million from the general fund to the water adjudication account provided for in 85-2-280 to be used for the sole purpose of completing the statewide water adjudication by 2020. The transfer must take place on July 15, 2007.

**Section 7.** Section 85-2-281, MCA, is amended to read:

**"85-2-281. (Temporary) Reporting requirements.** The department and the water court shall:

- (1) provide reports to the environmental quality council at each meeting during a legislative interim on:
  - (a) the progress of the adjudication on a basin-by-basin basis; and
  - (b) ~~the total revenue generated by the fees established in 85-2-276 and deposited in the account provided for in 85-2-280~~ the number of basins for which examination was completed during the reporting period;
- (2) include a status report on the adjudication in their presentation to the applicable appropriation subcommittees during each legislative session including the number of basins for which examination was completed during the reporting period; and
- (3) provide a budget that outlines how each of the entities will be funded in the next biennium, including general fund money; and state special revenue funds; ~~and the allocated fee revenue.~~ (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

**NEW SECTION. Section 8. Collection of outstanding water adjudication fees.** [This act] does not affect the collection of fees from a water right owner who did not pay the water adjudication fee provided for in former 85-2-276 as of [the effective date of this act]. The department of natural resources and conservation shall turn over any debt to the department of revenue for collection pursuant to Title 17, chapter 4. If efforts to collect the debt are not successful, the department of revenue may file a lien against the water right in the county where the water is put to beneficial use after notifying each entity enumerated on the water right.

**NEW SECTION. Section 9. Repealer.** Sections 85-2-272, 85-2-273, 85-2-276, 85-2-279, and 85-2-283, MCA, and section 15, Chapter 288, Laws of 2005, are repealed.

**NEW SECTION. Section 10. Effective date.** [This act] is effective July 1, 2007.

**NEW SECTION. Section 11. Termination.** [Sections 2 through 5 and 7] terminate June 30, 2020.

- END -

