

SENATE BILL NO. 36

INTRODUCED BY B. HAMLETT

BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A DISTRICT COURT DISCRETION TO AWARD REASONABLE COSTS AND ATTORNEY FEES INCURRED AS A RESULT OF AN APPEAL OF A FINAL DECISION ON A PERMIT APPLICATION OR A CHANGE IN APPROPRIATION RIGHT; ~~PROHIBITING ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES INCURRED AS A RESULT OF ADMINISTRATIVE PROCEEDINGS;~~ AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE AN APPLICABILITY DATE."

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

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

"85-2-125. Recovery of costs and attorney fees by prevailing party. (1) If a final decision of the department on an application for a permit or a change in appropriation right is appealed to district court, the district court ~~shall~~ may award the prevailing party reasonable costs and attorney fees. THE DISTRICT COURT MAY NOT AWARD COSTS OR ATTORNEY FEES INCURRED AS A RESULT OF ADMINISTRATIVE PROCEEDINGS.

(2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right."

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

~~NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to pending applications for a permit or a change in appropriation right for which a district court judgment has not been entered prior to [the effective date of this act].~~

NEW SECTION. **SECTION 3. APPLICABILITY.** [THIS ACT] APPLIES TO AN APPLICATION FOR A PERMIT OR A CHANGE IN AN APPROPRIATION RIGHT FILED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

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