

SENATE BILL NO. 76

INTRODUCED BY S. VINTON

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PRELIMINARY DETERMINATIONS FOR A WATER RIGHT PERMIT OR CHANGE IN APPROPRIATION RIGHT APPLICATION; AMENDING SECTION 85-2-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-307, MCA, is amended to read:

"85-2-307. (Temporary) Notice of receipt of application for permit or change in appropriation right -- draft preliminary determination -- extensions -- updated draft preliminary determination -- public comments -- issuance of preliminary determination. (1) On receipt of an application for a permit or a change in appropriation right, the department shall publish notice of receipt of the application on the department's website. The notice must be updated on the website when an application is determined to be correct and complete.

(2) Within 60 days of receiving a correct and complete application if the applicant has completed a preapplication meeting ~~and the department has prepared the technical analyses~~ or within 120 days of receiving a correct and complete application if the ~~department has not prepared the technical analyses~~ applicant has not completed a preapplication meeting, the department:

(a) may meet with the applicant, the persons listed in subsection (4)(f), and persons who may claim standing pursuant to 85-2-308 to discuss the application;

(b) shall make a written draft preliminary determination as to whether or not the application satisfies the applicable criteria for issuance of a permit or change in appropriation right; and

(c) may include conditions in the written draft preliminary determination to satisfy applicable criteria for issuance of a permit or change in appropriation right.

1 (3) (a) An applicant has 15 business days from issuance of a draft preliminary determination to
2 request an extension of time to submit additional information. The department may grant an extension of up to
3 180 days for the applicant to submit additional evidence. The department shall provide the applicant with written
4 notice of the extension deadline.

5 (b) The department may revise its draft preliminary determination based on information received
6 under subsection (3)(a). The department shall issue an updated draft preliminary determination within 60 days
7 after the earliest date of:

8 (i) the extension deadline set pursuant to subsection (3)(a); or

9 (ii) the department's receipt of written notice from the applicant stating submittal of all additional
10 information to the department is considered correct and complete.

11 (c) If the department's updated draft preliminary determination:

12 (i) is to deny the application, the department shall hold a hearing as provided in 85-2-310; or

13 (ii) is to grant the application or grant the application in modified form, the department shall provide
14 notice of the opportunity to provide public comment pursuant to subsection (4).

15 (d) If the applicant does not request an extension of time, the department shall:

16 (i) provide notice of the draft preliminary determination to grant the application or grant the
17 application in modified form and also provide notice of the opportunity to provide public comment pursuant to
18 subsection (4); or

19 (ii) ~~adopt a draft preliminary determination to deny the application as the final determination~~issue a
20 preliminary determination to deny the application and hold a hearing as provided in 85-2-310.

21 (4) (a) The department shall prepare a notice of the opportunity to provide public comment on a
22 draft preliminary determination or an updated draft preliminary determination issued for an application.

23 (b) The notice of the opportunity to provide public comment must:

24 (i) state that no more than 30 days after the date of publication, a person may file a public
25 comment about the application with the department on a form provided by the department; and

26 (ii) contain facts pertinent to the application, including a summary of the draft preliminary
27 determination and any conditions.

28 (c) The department shall publish the notice once in a newspaper of general circulation in the area

1 of the source of the appropriation right and post the notice on the department website.

2 (d) A public comment must identify how one or more criteria for the issuance of a permit ~~of or~~ a
3 change in appropriation right is not adequately addressed in a draft preliminary determination issued for the
4 application. The department may adopt additional rules for public comments.

5 (e) A person has standing to file a public comment pursuant to this section if the property, water
6 rights, or interests of the person would be adversely affected by the proposed appropriation.

7 (f) Before the date of publication of the notice of the opportunity to provide public comment, the
8 department shall also serve the notice by first-class mail on:

9 (i) an appropriator of water or applicant for or holder of a permit who, according to the records of
10 the department, may be affected by the proposed appropriation;

11 (ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to
12 the records of the department, may be affected by the proposed appropriation; and

13 (iii) any public agency that has reserved waters in the source under 85-2-316.

14 (g) The department may, in its discretion, also serve notice on any state agency or other person
15 the department feels may be interested in or affected by the proposed appropriation.

16 (h) The department shall file in its records proof of service by affidavit of the publisher in the case
17 of notice by publication and by its own affidavit in the case of service by mail.

18 (5) (a) Within 30 days after the ~~date of publication of the notice of the opportunity to provide close~~
19 of the period to provide public comment, the department shall consider the public comments, respond to the
20 public comments, and issue a preliminary determination to grant the application, grant the application in
21 modified form, or deny the application.

22 (b) If, after considering the public comments subject to subsection (5)(a), the department's
23 preliminary determination is to:

24 (i) deny the application, the department shall hold a hearing as provided in 85-2-310; or

25 (ii) grant the application or grant the application in a modified form, a person may file an objection
26 to an application pursuant to 85-2-308.

27 (c) If no public comments are received pursuant to subsection (4), the department's preliminary
28 determination is adopted as the final determination. (Terminates June 30, 2031--sec. 9, Ch. 244, L. 2023.)

85-2-307. (Effective July 1, 2031) Notice of application for permit or change in appropriation

right. (1) Upon receipt of an application for a permit or a change in appropriation right, the department shall publish notice of receipt of the application on the department's website.

(2) (a) Within 120 days of the receipt of a correct and complete application for a permit or change in appropriation right, the department:

(i) may meet informally with the applicant, the persons listed in subsection (2)(d), and persons who may claim standing pursuant to 85-2-308 to discuss the application;

(ii) shall make a written preliminary determination as to whether or not the application satisfies the applicable criteria for issuance of a permit or change in appropriation right; and

(iii) may include conditions in the written preliminary determination to satisfy applicable criteria for issuance of a permit or change in appropriation right.

(b) If the preliminary determination proposes to grant an application, the department shall prepare a notice containing the facts pertinent to the application, including the summary of the preliminary determination and any conditions, and shall publish the notice once in a newspaper of general circulation in the area of the source.

(c) If the preliminary determination proposes to deny an application, the process provided in 85-2-310 must be followed.

(d) Before the date of publication, the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(e) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(f) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

1 (3) The notice must state that by a date set by the department, not less than 15 days or more than
2 60 days after the date of publication, persons may file with the department written objections to the application."

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

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