

1 House BILL NO. 59  
 2 INTRODUCED BY Galley  
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4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD  
 5 OF NATURAL RESOURCES AND CONSERVATION TO ESTABLISH, AND THE  
 6 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO  
 7 ADMINISTER, A SYSTEM OF WILD, SCENIC, AND RECREATIONAL RIVER  
 8 AREAS."  
 9

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

11 Section 1. Statement of purpose. The purpose of this  
 12 act is to allow the state, through its board and department  
 13 of natural resources and conservation, to take appropriate  
 14 action to preserve selected segments of free-flowing rivers  
 15 from locally unwanted dams and reservoirs without diminution  
 16 of private property rights. Certain portions of this act  
 17 are intended to authorize the state to secure commitments  
 18 from the federal government, through the Wild and Scenic  
 19 Rivers Act of 1968, that such designated free-flowing rivers  
 20 may be preserved.

21 Section 2. As used in this act: (1) "Watercourse"  
 22 means a substantially natural channel with recognized banks  
 23 and bottom, in which a flow of water occurs, with an average  
 24 of at least ten (10) feet mean surface water width and at  
 25 least five (5) miles length.

1 (2) "Wild river areas" means those rivers or sections  
 2 of rivers that are free of impoundments and generally  
 3 inaccessible except by trail, with watersheds or shorelines  
 4 essentially primitive and waters unpolluted, representing  
 5 vestiges of primitive Montana.

6 (3) "Scenic river areas" means those rivers or sections  
 7 of rivers that are free of impoundments, with shorelines or  
 8 watersheds still largely primitive and shorelines largely  
 9 undeveloped but accessible in places by roads.

10 (4) "Recreational river areas" means those rivers or  
 11 sections of rivers that are readily accessible by road or  
 12 railroad, that may have some development along their  
 13 shorelines, and that may have undergone some impoundment or  
 14 diversion in the past.

15 Section 3. Creation of wild, scenic, and recreational  
 16 river areas--procedure. (1) The director of natural  
 17 resources and conservation may propose for establishment as  
 18 a wild, scenic, or recreational river area a part or parts  
 19 of any watercourse in this state, with adjacent lands, which  
 20 in his judgment possess water conservation, scenic, fish,  
 21 wildlife, historic, or outdoor recreation values which  
 22 should be preserved. The area shall include lands adjacent  
 23 to the watercourse in sufficient width to preserve, protect,  
 24 and develop the natural character of the watercourse, but  
 25 may not include any lands more than one thousand (1000) feet

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1 from the normal waterlines of the watercourse. The director  
 2 shall give notice of his proposal in the manner provided for  
 3 proposed rule-making under the Montana Administrative  
 4 Procedure Act, and shall also send written notice of the  
 5 proposed action to each county, municipality, and  
 6 conservation district in whose area the proposed wild,  
 7 scenic, or recreational river area lies. The department  
 8 shall conduct a public hearing on the proposal within one of  
 9 the counties given notice. The proposal may include rules  
 10 authorized under section 7 of this act.

11 (2) After reviewing the hearing or comments on the  
 12 proposed action, the board of natural resources and  
 13 conservation shall approve, reject, or modify the scenic  
 14 river area. The board shall approve a proposal for any part  
 15 of a river which, with adjacent lands, has in the board's  
 16 judgment water conservation, scenic, fish, wildlife,  
 17 historic, or outdoor recreation values which ought to be  
 18 preserved.

19 (3) No rule adopted by the board under this section may  
 20 restrict the use of land by its owner, or permit any agent  
 21 of the department to enter on private land, or restrict any  
 22 landowner in the exercise and enjoyment of his water rights.

23 Section 4. Prohibition of public construction without  
 24 consulting department. No state agency or local government  
 25 may build or enlarge any highway or structure or modify the

1 channel of any watercourse within the limits of a wild,  
 2 scenic, or recreational river area and outside the limits of  
 3 a city or town without having first obtained approval of the  
 4 plans for such highway, structure, or channel modification  
 5 from the department of natural resources and conservation.  
 6 The district court having jurisdiction in the area shall,  
 7 upon petition by the department, enjoin work on any highway,  
 8 structure, or channel modification for which such approval  
 9 has not been obtained.

10 Section 5. Federal assistance--facilities and land.  
 11 The department of natural resources and conservation may  
 12 administer federal financial assistance programs for wild,  
 13 scenic, and recreational river areas. It may expend funds  
 14 for construction, maintenance, and administration of  
 15 facilities in wild, scenic, and recreational river areas  
 16 when funds are appropriated for such purposes by the  
 17 legislature. It may acquire lands and interests in land  
 18 from willing sellers for protection and public use as wild,  
 19 scenic, or recreational river areas. It may make a lease or  
 20 agreement with a political subdivision to administer all or  
 21 part of a wild, scenic, or recreational river area.

22 Section 6. Advisory councils. The director of natural  
 23 resources and conservation shall appoint an advisory council  
 24 for each approved wild, scenic, or recreational river area,  
 25 composed of not more than ten (10) persons representative of

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1 local government and local organizations and interests in  
2 the vicinity of the river area, who shall serve without  
3 compensation. An advisory council shall advise the  
4 department on acquisition of land and easements, the lands  
5 and waters which should be included in a wild, scenic, or  
6 recreational river area, the development of facilities in  
7 the area, and other aspects of the administration of the  
8 river area which may affect the local interest.

9 Section 7. Scope of rules. Rules adopted under  
10 section 3 of this act shall: (1) specify the boundaries of  
11 a scenic river area;

12 (2) provide for the incorporation of the scenic river  
13 in the state water plan; and

14 (3) govern the use of lands and facilities owned and  
15 operated by the state and located within the scenic river  
16 area.

17 Section 8. Legislative review of designations. The  
18 legislature may by joint resolution repeal any rule  
19 designating a wild, scenic, or recreational river area, as  
20 provided under section 82-4203.1.

-End-

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Approved by Committee  
on Natural Resources

HOUSE BILL NO. 59

INTRODUCED BY YARDLEY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ESTABLISH, AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADMINISTER, A SYSTEM OF WILD, SCENIC, AND RECREATIONAL RIVER AREAS."

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

Section 1. Statement of purpose. The purpose of this act is to allow the state, through its board and department of natural resources and conservation, to take appropriate action to preserve ~~selected---segments---of~~ DESIGNATED free-flowing rivers from ~~locally-unwanted~~ CERTAIN dams and reservoirs without diminution of private property rights. Certain portions of this act are intended to authorize the state to secure commitments from the federal government, through the Wild and Scenic Rivers Act of 1968, that such designated free-flowing rivers may be preserved.

Section 2. As used in this act: (1) ~~"Watercourse" means--a-substantially-natural-channel-with-recognized-banks-and-bottomy-in-which-a-flow-of-water-occurs,-with-an-average-of-at-least-ten-(10)-feet-mean-surface-water--width--and--at-least--five--(5)--miles-length.~~ "FREE-FLOWING RIVER" MEANS A

RIVER, OR SECTION OF A RIVER, WHICH EXISTS OR FLOWS IN A NATURAL CONDITION WITHOUT IMPOUNDMENT, DIVERSION, STRAIGHTENING, RIP-RAPPING, OR OTHER MODIFICATION, EXCEPT AS HEREINAFTER PROVIDED, AND WHICH HAS A MEAN DISCHARGE OF TWENTY-FIVE (25) CUBIC FEET PER SECOND AND A MEAN SURFACE WATER WIDTH OF AT LEAST TWENTY-FIVE (25) FEET, AND WHICH MEASURES AT LEAST FIVE (5) MILES IN LENGTH. THE EXISTENCE OF LOW DAMS, DIVERSION WORKS, AND OTHER MINOR STRUCTURES AT THE TIME ANY RIVER IS PROPOSED FOR INCLUSION IN THE MONTANA WILD AND SCENIC RIVERS SYSTEM SHALL NOT AUTOMATICALLY BAR ITS CONSIDERATION FOR SUCH INCLUSION.

(2) "MEAN DISCHARGE" IS THE ARITHMETIC AVERAGE OF INDIVIDUAL DAILY MEAN DISCHARGES DURING NORMAL WATER YEARS THROUGHOUT THE DESIGNATED FREE-FLOWING RIVER.

(3) "MEAN SURFACE WATER WIDTH" IS THE AVERAGE WIDTH THROUGHOUT THE DESIGNATED FREE-FLOWING RIVER, MEASURED DURING PERIODS OF MEAN DISCHARGE.

~~(2)~~ (4) "Wild river areas" means those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted, representing vestiges of primitive Montana.

~~(3)~~ (5) "Scenic river areas" means those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and

1 shorelines largely undeveloped but accessible in places by  
2 roads.

3 ~~{4}~~--(6) "Recreational river areas" means those rivers  
4 or sections of rivers that are readily accessible by road or  
5 railroad, that may have some development along their  
6 shorelines, and that may have undergone some impoundment or  
7 diversion in the past.

8 Section 3. Creation of wild, scenic, and recreational  
9 river areas--procedure. (1) The director of natural  
10 resources and conservation may propose for establishment as  
11 a wild, scenic, or recreational river area ~~a-part--or--parts~~  
12 ~~of--any--watercourse~~ ANY FREE-FLOWING RIVER in this state,  
13 with adjacent lands, which in his judgment possess  
14 AGRICULTURAL, water conservation, scenic, fish, wildlife,  
15 historic, or outdoor recreation values which should be  
16 preserved. The area shall include lands adjacent to ~~the~~  
17 ~~watercourse~~ SUCH FREE-FLOWING RIVER in sufficient width to  
18 preserve, protect, and develop the natural character of the  
19 ~~watercourse~~ DESIGNATED AREA, but may not include any lands  
20 more than one thousand (1000) feet from the normal  
21 waterlines of the ~~watercourse~~ RIVER. The director shall  
22 give notice of his proposal in the manner provided for  
23 proposed rule-making under the Montana Administrative  
24 Procedure Act, and shall also send written notice of the  
25 proposed action to each county, municipality, and

1 conservation district in whose area the proposed wild,  
2 scenic, or recreational river area lies. The department  
3 shall conduct a public hearing on the proposal within ~~one~~  
4 EACH of the counties given notice. The proposal may include  
5 rules authorized under section 7 of this act.

6 (2) After reviewing the hearing or comments on the  
7 proposed action, the board of natural resources and  
8 conservation ~~shall~~ MAY approve, reject, or modify the ~~scenic~~  
9 WILD, SCENIC OR RECREATIONAL river area. The board ~~shall~~  
10 ~~approve--a-proposal-for-any-part-of-a~~ MAY APPROVE A PROPOSAL  
11 FOR ANY FREE-FLOWING river which, with adjacent lands, has  
12 in the board's judgment AGRICULTURAL, water conservation,  
13 scenic, fish, wildlife, historic, or outdoor recreation  
14 values which ought to be preserved.

15 (3) No rule adopted by the board under this section may  
16 restrict the use of land by its owner, or permit ~~any-agent~~  
17 ~~of-the--department--to--enter--on~~ UNAUTHORIZED ENTRY UPON  
18 private land, or restrict any landowner in the exercise and  
19 enjoyment of his water rights AND GRAZING RIGHTS.

20 Section 4. Prohibition of public construction without  
21 consulting department. No state agency or local government  
22 may build or enlarge any highway or structure or modify the  
23 channel of any ~~watercourse~~ FREE-FLOWING RIVER within the  
24 limits of a wild, scenic, or recreational river area and  
25 outside the limits of a city or town without having first

1 obtained approval of the plans for such highway, structure,  
 2 or channel modification from the department of natural  
 3 resources and conservation. The district court having  
 4 jurisdiction in the area shall, upon petition by the  
 5 department, enjoin work on any highway, structure, or  
 6 channel modification for which such approval has not been  
 7 obtained.

8 Section 5. Federal assistance--facilities and land.  
 9 The department of natural resources and conservation may  
 10 administer federal financial assistance programs for wild,  
 11 scenic, and recreational river areas. It may expend funds  
 12 for construction, maintenance, and administration of  
 13 facilities in wild, scenic, and recreational river areas  
 14 when funds are appropriated for such purposes by the  
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 16 from willing sellers for protection and public use as wild,  
 17 scenic, or recreational river areas. It may make a lease or  
 18 agreement with a political subdivision to administer all or  
 19 part of a wild, scenic, or recreational river area.

20 Section 6. Advisory councils. The director of natural  
 21 resources and conservation shall appoint an advisory council  
 22 for each approved wild, scenic, or recreational river area,  
 23 composed of ~~not more than ten (10) persons representative of~~  
 24 ~~local government and local organizations and interests in~~  
 25 ~~the vicinity of the river area~~ AT LEAST SEVEN (7) PERSONS

1 REPRESENTATIVE OF INTERESTS IN THE DESIGNATED AREA AND  
 2 FAIRLY PROPORTIONATE TO THOSE INTERESTS, who shall serve  
 3 without compensation. An advisory council shall advise the  
 4 department on acquisition of land and easements, the lands  
 5 and waters which should be included in a wild, scenic, or  
 6 recreational river area, the development of facilities in  
 7 the area, and other aspects of the administration of the  
 8 river area which may affect the ~~local--interest~~ INTERESTS  
 9 THEREIN.

10 Section 7. Scope of rules. Rules adopted under  
 11 section 3 of this act shall:

12 (1) specify the boundaries of a ~~scenic~~ WILD, SCENIC OR  
 13 RECREATIONAL river area;

14 (2) provide for the incorporation of the ~~scenic~~ WILD,  
 15 SCENIC OR RECREATIONAL river in the state water plan; and

16 (3) govern the use of lands and facilities owned and  
 17 operated by the state and located within the ~~scenic~~ WILD,  
 18 SCENIC OR RECREATIONAL river area.

19 Section 8. Legislative review of designations. The  
 20 legislature may by joint resolution repeal any rule  
 21 designating a wild, scenic, or recreational river area, as  
 22 provided under section 82-4203.1.

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 20 legislature may by joint resolution repeal any rule  
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